

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at The Palm Room  
Wigwam Resort, 300 E. Wigwam Blvd.  
Litchfield Park, Arizona  
Friday, August 14, 2009 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	Louis W. Lujano, Sr.	Member
	John A. McCarthy, Jr.	Member
	David Parker	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Vice Chairman Weeks was not able to attend. Also in attendance was Jen Jones of Snell & Wilmer.

Approval of Minutes of August 5, 2009 Meeting

The Commission unanimously approved the Minutes of the August 5, 2009 meeting on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed OSHA Citations and Penalties

Buxton Drywall, Inc. 2889 N. Kiowa Blvd. Lake Havasu City, AZ 86404	Planned Yrs/Business – 18 Empl. Cov. by Insp. – 2
Site Location: 1691 N. Oatman Road, Bullhead City, AZ 86442	
Inspection #: Q8339/313594814	
Insp. Date: 06/30/09	

SERIOUS – Citation 1, item 1 – An employee working at an extended height in a crane, did not have his lanyard attached to the anchor points within the basket (1926.453(b)(2)(v)).  
(No inspection history in the past three years).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
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SERIOUS – Citation 1, item 2 – One employee had his lanyard wrapped around the handrail of the aerial lift basket and attached onto itself (1926.502(c)(8)(i)).

Div. Proposal - \$1,000.00	Formula Amt. - \$1,000.00
TOTAL DIV. PROP. - \$2,000.00	TOTAL FORMULA AMT - \$2,000.00

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 \$2,000.00 on motion of Mr. McCarthy, second of Mr. Lujano. Following consideration of the following case file, this action was reconsidered by the Commission (see minutes below).



Aaron's Inc. dba Aaron Sale and Lease  
428 S. Boulder Hwy.  
Henderson, NV 89015

Complaint  
Yrs/Business - 20  
Empl. Cov. by Insp. - 3

Site Location: 1751 Hwy 95, #179, Bullhead City, AZ 86442  
Inspection #: Q8339/313594871  
Insp. Date: 06/30/09

SERIOUS - Citation 1, item 1 - The emergency exit from the staging area was locked during business hours (1910.36(b)(4)).

(No inspection history in the past three years).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS - Citation 1, item 2 - Visible mold was on the walls leading into the restrooms, along the floor base cove inside the restrooms as well as water damaged drywall and ceiling in the secure storage room (1910.141(a)(3)(i)).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

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 3a - Between the restrooms there is a floor drain for the water heater pressure relief valve. A receptacle outlet and hose bib were added so washing machines can be tested. The receptacle is not suitable for wet surfaces 1910.305(j)(2)(ii). There was another instance of this violation.

Citation 1, item 3b - Receptacles had broken ground pins lodged in the outlet (1910.334(a)(3)(ii)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL DIV. PROP. - \$5,700.00

TOTAL FORMULA AMT - \$5,700.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Parker questioned whether the citation dealing with mold should be classified as serious. Following further discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$5,700.00 on motion of Mr. Delfs, second of Mr. Lujano. As part of the motion, ADOSH was advised that it may reconsider the penalty and classification of Citation 1, item 2, if the employer takes appropriate corrective action and/or additional information is received regarding the extent of the mold.

#### Discussion & Action of ADOSH Discrimination Complaints

#09-34 Anthony Campidonica v. Arizona Department of Transportation - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Campidonica. In his complaint, Mr. Campidonica alleged that he received a negative evaluation and was put on an unpaid suspension following a report of unsafe equipment to management. The employer stated that Mr. Campidonica was placed on suspension for reasons unrelated to reports of unsafe equipment.

Mr. Perkins described the allegations and the employer's response in detail and

responded to questions from the Commissioners. It was discussed that Mr. Campidonica did not deny taking the state vehicle home at night and that his low evaluations appear to do with his inability to accept and follow directions. Mr. Perkins stated that based on the information gathered during the investigation, it did not appear that the evidence established or indicated a connection between Mr. Campidonica's suspension and any protected activity and recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Parker.

#09-37 Frank Martinaitis v. Compass West Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Martinaitis. In his complaint, Mr. Martinaitis alleged that the company he worked for did not take samples of the demolition job he was working on. He alleged that he asked his employer if any samples of the dry wall and stucco had been tested for asbestos. Mr. Martinaitis took samples of the materials at his own expense and reported that the samples came back from the lab containing 2% asbestos. He informed his employer and the employer stopped the job. After that, he was told they would call him when there was more work. Mr. Martinaitis alleged that the employer never called him back to work on this project or any other project and that he was never laid off or fired. The employer stated that when they heard the project had asbestos, they shut the job down to arrange for and perform testing. At that time, there was no other work available for Mr. Martinaitis. The employer stated that they had bid on several jobs, but they were not awarded contract and with no work, they eventually laid off Mr. Martinaitis, at his own request.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. Mr. Perkins stated that based on the information gathered during the investigation, it did not appear that the evidence established or indicated a connection between Mr. Martinaitis' lack of work and any protected activity and recommended that the case not be pursued. The Commission unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Mr. Lujano.

#09-40 Sharon Baker v. Avra Valley Fire District - Chairman Delfs recused himself from this agenda item and this portion of the meeting was chaired by Mr. Lujano. Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Baker. In her complaint, Ms. Baker alleged that she was terminated due in part to her involvement with concerns on safety at the department and her union activity. The employer stated that Ms. Baker was terminated based on her conduct regarding her emergency response as a paramedic.

Mr. Perkins described the allegations and the employer's response in detail and responded to questions from the Commissioners. The Commissioners discussed Ms. Baker's conduct during an emergency response in which she did not bring the appropriate paramedic gear. They also discussed the incident involving the missing morphine and her failure to inspect her drug box, which incident led to the revocation of her medical direction to act as a paramedic by St. Mary's Hospital. Mr. Perkins stated that based on the information gathered during the investigation, it did not appear that the evidence established or indicated a connection between Ms. Baker's termination and any protected activity and recommended that the case not be pursued. The Commission voted not to pursue the complaint on motion of Mr. Parker, second of Mr. McCarthy. Mr. Lujano voted nay.

Mr. Delfs resumed chairmanship of the meeting.

## Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1816	D'Lish Drive Thru, Inc. dba D'Lish Drive Thru
2C08/09-1844	Desert View Dentistry L.L.C.
2C08/09-1764	Ferek, Inc. dba Motra Transmissions
2C08/09-0426	Richard James Voth Jr. & Samantha Simmons Voth Husband & Wife dba Samurai Sam's Teriyaki Grill/Surf City Squeeze
2C08/09-1536	T.G. Greenfield, Inc. dba Mama Rose's Gourmet Foods
2C08/09-1169	Timely Integrated Inc.

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 #1816, 1844, 1764 0426, 1536 and 1169. Mr. Wade responded to questions from the Commissioners regarding these employers and their coverage histories and stated that all had either wage or no insurance claims. The Commission unanimously assessed the recommended penalties of \$1,000.00 against employers #1816, 1844, 1764 0426, 1536 and 1169 on motion of Mr. Lujano, second of Mr. Parker.

## Discussion &/or Action regarding Legislation

Ms. McGrory stated there was nothing new to report.

## Discussion &/or Action regarding Operations of the Industrial Commission

Ms. McGrory stated this is a continuing agenda item and she had nothing new to report.

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.

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Mr. Wade stated that discovery requests and Notices of Deposition have been served by the opposing attorneys and he would keep the Commission updated.

## Announcements

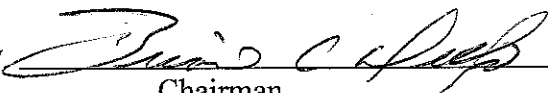
Ms. Hilton reminded the Commissioners that the next meeting will be held on Thursday, August 20, 2009.

Ms. McGrory stated that the Commissioners have been provided with updated information for consideration of the assessments and this topic would be addressed at the meeting scheduled for August 27, 2009.

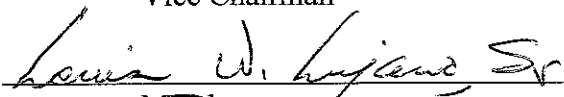
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:52 p.m.

APPROVED:


THE INDUSTRIAL COMMISSION OF ARIZONA

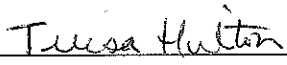
By   
Chairman

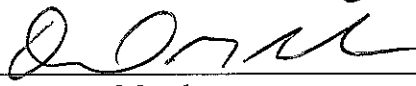
By \_\_\_\_\_  
Vice Chairman

By   
Member

ATTEST:

By   
Member

  
Commission Secretary

By   
Member