MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Wednesday, October 7, 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 (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Bill Wright	Acting Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Gary Norem	Chief Financial Officer
	Kara Dimas	Acting Commission Secretary

Chairman Delfs convened the Commission meeting at 1:05 p.m. noting a quorum present. Also in attendance was Jen Jones of Snell & Wilmer.

Approval of Minutes of October 1, 2009 Meeting

The Commission approved the Minutes of the October 1, 2009 General Session on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained. The Commission approved the Minutes of the October 1, 2009 Executive Session on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Delfs abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Bootz & Duke Sign Co. — Planned
4028 W. Whitton Avenue — Yrs/Business – 38
Phoenix, AZ 85019 — Empl. Cov. by Insp. – 4

Site Location: 3255 S. Rural Road, Tempe, AZ 85282
Inspection #: N4762/313587339
Insp. Date: 06/22/09

SERIOUS – Citation 1, item 1 – The employer did not ensure that each employee was trained in the recognition and avoidance of hazards associated with the operation of a truck-mounted aerial lift prior to the operation of the equipment (1926.454(a).
(Two inspections with 5 nonserious violations in the past three years).
Div. Proposal - $1,500.00 Formula Amt. - $1,500.00

SERIOUS – Citation 1, item 2 – An employee's personal fall arrest system used in a truck-mounted aerial lift was rigged in such a way tht the employee could contact the ground in the event of a fall (1926.502(d)(16)(iii). There was another instance of this violation.
Div. Proposal - $1,500.00 Formula Amt. - $1,500.00
TOTAL DIV. PROP. - $3,000.00 TOTAL FORMULA AMT - $3,000.00

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 $3,000.00 on motion of Mr. Lujano, second of Ms. Weeks.

Urban Renovations, Inc.
3709 E. Hazelwood Street
Phoenix, AZ 85018

Complaint
Yrs/Business – 6
Empl. Cov. by Insp. – 3

Site Location: 885 S. Storment Lane, Gilbert, AZ 85296
Inspection #: N4762/313581191
Insp. Date: 06/17/09

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 1a – Two employees were working on a fabricated frame scaffold 50' long, 3' wide and 23' high that did not have the working levels of the scaffold fully planked to prevent a fall (1926.451(b)(1). There was another instance of this violation.

Citation 1, item 1b - Two employees were working from a fabricated frame scaffold 50' long, 3' wide and 23' high that had the base plates placed directly upon the soil surface and did not have mud sills to support any load that might be placed upon it (1926.451(c)(2).

Citation 1, item 1c - Two employees were working from a fabricated frame scaffold 50' long, 3' wide and 23' high that was supported by unstable objects (i.e. weather damaged and inadequate sized mud sills (1926.451(c)(2)(ii).

Citation 1, item 1d - Two employees were working from a fabricated frame scaffold 50' long, 3' wide and 23' high that was not provided with a means of accessing the scaffold such as a ladder (1926.451(e)(1). There was another instance of this violation.

Citation 1, item 1e - The employer did not ensure that a fabricated frame scaffold 50' long, 3' wide and 23' high was inspected daily by a competent person (1926.451(f)(3). There was another instance of this violation.
(No inspection history in the past three years).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 2 – Two employees were working from a fabricated frame scaffold 50' long, 3' wide and 23' high in which standard guardrails (i.e. toprail, midrail) were not installed on all open sides and ends to prevent a fall (1926.451(g)(4)(i). There was another instance of this violation.
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 3 – Three untrained employees were working from fabricated frame scaffolds 50' long, 3' wide and 23' high (1926.454(a).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 4 – The employer did not ensure that employees that were exposed to an open doorway were protected from falling by the use of a guardrail system, a safety net system or a personal fall arrest system (1926.501(b)(1). There was another instance of this

violation.

Div. Proposal - $ 750.00 Formula Amt. - $ 750.00
TOTAL DIV. PROP. - $3,000.00 TOTAL FORMULA AMT - $3,000.00

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 $3,000.00 on motion of Mr. McCarthy, second of Ms. Weeks. Mr. Lujano voted nay.

City of Coolidge – Parks Maintenance Department
130 W. Central Avenue
Coolidge, AZ 85128

Planned
Yrs/Business – 100
Empl. Cov. by Insp. – 8

Site Location: 802 S. Kenworthy Avenue, #D, Coolidge, AZ 85128
Insp. #: A7746/313697617
Insp. Date: 08/04/09

SERIOUS – Citation 1, item 1 – An overhead storage area approximately 9' above ground level was lacking a standard railing or the equivalent along the open sided floor (1910.23(c)(1).
(No inspection history in the past three years).

Div. Proposal - $1,400.00 Formula Amt. - $1,400.00

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 $1,400.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Speros Enterprises, Inc.
1210 E. Northern
Phoenix, AZ 85020

Complaint
Yrs/Business – 25
Empl. Cov. by Insp. – 14

Site Location: 1210 E. Northern, Phoenix, AZ 85020
Insp. #: Y5457/313697401
Insp. Date: 07/30/09

SERIOUS – Citation 1, item 1 – Approximately 500' of schedule 40 PVC was used for the transportation of compressed air at various pressures (R205.628).
(No inspection history in the past three years).

Div. Proposal - $300.00 Formula Amt. - $300.00

SERIOUS – Citation 1, item 2 – Employees were operating the forklifts and did not use seatbelts that were provided (1910.132(a).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 3 – Employees were operating forklifts without having performed inspections prior to the operation (1910.178(q)(7).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 4 – A table saw did not have an on/off switch installed that would prevent automatic restart upon restoration of power after power failure (i.e. magnetic contact switch) (1910.213(b)(3).

Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 5 – A table saw was lacking a hood guard (1910.213(c)(1).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 6 – A 10" radial arm saw was lacking a blade guard (1910.213(h)(1).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 7 – A 14" band saw was lacking a blade guard (1910.213(i)(1).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 8 – A bench grinder was lacking a safety guard which covered the spindle end, nut and flange projections (1910.215(a)(3).
Div. Proposal - $600.00 Formula Amt. - $600.00

SERIOUS – Citation 1, item 9 – A masonry saw did not have the drive belt guarded and the pulley completely enclosed (1910.219(d)(1) & (e)(3)(i).
Div. Proposal - $750.00 Formula Amt. - $750.00

SERIOUS – Citation 1, item 10 – A radial arm saw had exposed electrical wires in the handle of the saw and a wire on the right side of the saw had a damaged sheath, exposing the wires (1910.303(b)(1).
Div. Proposal - $ 750.00 Formula Amt. - $ 750.00
TOTAL DIV. PROP. - $6,900.00 TOTAL FORMULA AMT - $6,900.00

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. Lujano moved the penalty of $6,900.00 which was seconded by Ms. Weeks.

Mr. Delfs stated that if this employer is cooperative and is making a concerted effort to correct these violations, that Citation 1, items 5, 6 and 7 could be combined as one citation since they are all blade guard issues. This would result in a reduction of the penalty by $1,500.00. Mr. Parker stated that he agreed with Mr. Delfs. Mr. Lujano stated if there are specific violations with the equipment, the band saw or the table saw, that each violation falls under its own, separate standard with respect to the citation. Mr. Parker stated that the Commission has the authority to determine the appropriate penalty, and the Commission should want to recognize and encourage a good response from employers. Commissioners Lujano, Weeks & McCarthy voted to approve the recommended penalty of $6,900.00, Chairman Delfs and Mr. Parker voted nay.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C08/09-1181	AZ Dermatology, LLC AZ Dermatology
2C09/10-0258	Johnson's Pumping & Portable Services, Inc. dba All-N-1 Environmental
2C09/10-0257	Rex Noll & Nareida Noll, Husband & Wife dba Noll Construction
2C09/10-0324	Umbrella Roofing, LLC
2C08/09-1797	R & M Transportation, Inc.

Mr. Wade recommended that #1181 be removed from the agenda. He advised that a compliance investigation confirmed that the remaining 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 each of the remaining employers. Mr. Wade responded to questions from the Commissioners regarding these employers. The Commission unanimously assessed the recommended penalties of $1,000.00 against employers #0258, 0257, 0324 and 1797 on motion of Mr. McCarthy, second of Mr. Lujano.

Mr. Delfs suggested a possible review of the statute to increase the penalty for those who have a no insurance claim to $5,000.00 or something else more appropriate since it may be less expensive for employers to pay a $1,000.00 penalty than to carry insurance. Ms. McGrory described the penalty structure. She explained that the civil penalty that is assessed on an uninsured employer can be increased to $5,000.00 where there is a prior $1,000.00 penalty. Mr. Delfs stated that increasing the penalty amount for a no insurance claim would help the Commission be proactive rather than reactive in enforcing the statutory requirement that employers carry insurance. Ms. McGrory suggested that the Commission can explore this topic in greater detail and add this as a proposal to the Commission's legislative agenda.

Discussion & Action regarding Arizona Minimum Wage Rate for 2010

Randall Maruca advised that Arizona is one of ten states that adjusts the state minimum wage rate based on inflation. He referred to the specific language in A.R.S. 23-363(B), which states: "The minimum wage shall be increased on January 1, 2008 and on January 1 of successive years by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest five cents." Mr. Maruca explained that the consumer price index from August 2008 to August 2009 decreased by 1.5% and that Arizona's minimum wage statute does not include any provision that would allow the minimum wage to decrease, even though the consumer price index decreased. Because the statute does not allow for a decrease in the minimum wage and because the consumer price index did not increase, the State Labor Department recommends that the Arizona minimum wage rate remain at $7.25 per hour. Mr. Maruca responded to questions from the Commissioners. The Commission unanimously agreed to maintain the minimum wage at $7.25 per hour, on motion of Mr. McCarthy, second of Mr. Lujano.

After voting, there was additional discussion regarding the impact if, hypothetically speaking, the minimum wage was reduced. In response to that discussion, Mr. Delfs noted the Commission's obligation is to enforce the initiative and the initiative does not allow for a decrease in the Arizona minimum wage.

Discussion &/or Action regarding Budget and Operations of the Industrial Commission

Ms. McGrory advised there was nothing new to report.

Discussion &/or Action regarding Legislation

Ms. McGrory stated there was 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

The Commission unanimously voted to go into Executive Session on Motion of Mr. Delfs, second of Mr. Lujano. Following the Executive Session, the Commission retuned to General Session.

Executive Session Minutes are kept separately.

Announcements

Ms. McGrory informed the Commissioners that the next meeting is scheduled for Wednesday, October 14th. At this point in time, however, there is nothing for the agenda except the possible Civil Penalty that was held today. Without objection, the Commission unanimously agreed to suspend the meeting on the 14th. The next meeting will be on the 22nd. Mr. Wade advised that there will be a lump sum commutation hearing on November 5th.

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

Kara Dimas
Acting Commission Secretary

By _____
Member