

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, December 17, 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
	Darin Perkins	Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Gary Norem	Chief Financial Officer
	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 Jason Weber of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Mr. Butler updated the Commissioners on the Special Session, which started today. He explained that it was now limited to budget cuts since the deadline had already passed for getting issues on the ballot. The Special Session will not be a one day session since the legislature did not have the votes to suspend the rules. Therefore, no action would be taken today. He advised that the current budget deficit is \$1.6 to \$1.7 billion with collections still lagging well behind. Arizona is one of the three bottom states for economic recovery. Mr. Butler described the proposed legislation and stated that the Commission is not included. He responded to questions from the Commissioners and stated that if any thing happens in terms of the Special Session, he will let Ms. McGrory know.

Approval of Minutes of December 10, 2009 Meeting

The Commission approved the Minutes of December 10, 2009 on motion of Mr. Lujano, second of Mr. McCarthy. Mr. Parker abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

Thomas Moore dba Tommy's Erection

19047 E. Mauna Loa

Glendora, CA 91740

Unprogram Related

Yrs/Business – 35

Empl. Cov. by Insp. – 3

Site Location: 2345 E. Irvington Road, Tucson, AZ 85713

Inspection #: F3875/313891699

Insp. Date: 10/08/09

SERIOUS – Citation 1, item 1 – The employer had a 4 1/2" right angle grinder that was not equipped with a safety guard (1926.300(b)(1).

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

Div. Proposal - \$800.00

Formula Amt. - \$800.00

SERIOUS – Citation 1, item 2 – Employees working 13' above the ground along the edge of the roof, installing angles to the top surface of the building, were not protected from falling by the use of a guardrail system, safety net system or personal fall arrest system (1926.501(b)(1).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, item 3 – Employees who were exposed to fall hazards on the jobsite were not trained to recognize the hazard of falling and the procedures to be followed in order to minimize those hazards (1926.503(a)(1).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL DIV. PROP. - \$2,800.00

TOTAL FORMULA AMT - \$2,800.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Mr. Lujano noted that this company had been in business for 35 years and asked Mr. Perkins to impress upon them the need for training and fall protection for the safety of their employees. Mr. Lujano made a motion to assess the recommended penalty of \$2,800.00 which was seconded by Mrs. Weeks. Mr. Parker stated that the most recent article in the National Safety Council's magazine addresses the top ten OSHA citations and notes that fall protection and scaffolding in construction are in the top ten. Since the Commission frequently sees these violations, he questioned if there were other things the agency could do to promote education and help employers understand safer work practices. Mr. Perkins responded to the question and stated that even though ADOSH's resources are stretched thin, they are conducting training classes and have other educational efforts. Mrs. Weeks questioned whether a penalty may be negotiated down in informal conference if the employer agrees to train employees. Mr. Perkins described some of the approaches used in resolving cases. The question was called for and the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$2,800.00.

Barrier Wear, LLC

9 Ojo Court

Rio Rico, AZ 85648

Site Location: 9 Ojo Court, Rio Rico, AZ 85648

Inspection #: F3875/313946998

Insp. Date: 10/21/09

Complaint

Yrs/Business – 26

Empl. Cov. by Insp. – 54

SERIOUS – Citation 1, item 1 – Employees were operating a forklift without the use of a seatbelt (1910.132(a).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Employees operating the forklift had not been trained or certified in the safe operation of forklifts (1910.178(l)(1)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00



Mr. Wade advised that a compliance investigation confirmed that the previously 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 #1072, 1916 and 1748. Mr. Wade stated that employer #0033 has obtained coverage and stated that he recommended a reduced penalty of \$500.00. Mr. Wade responded to questions from the Commissioners. The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #1072, 1916 and 1748 and a civil penalty of \$500.00 against employer #0033 on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed Youth Employment Penalty

Rim Country Rehab Inc. dba Rim Country Health & Retirement Community – Randall Maruca advised that this involved a 14 year old youth who worked after 11:00 p.m. and in excess of the hours allowed by statute. Mr. Lujano made a motion to assess the recommended penalty of \$70.00 which was seconded by Mr. McCarthy. Since the youth worked as an assistant aid in a nursing home, Mr. Parker questioned whether there was any bloodborne pathogen exposure. Mr. Maruca responded that the Labor Department did not investigate that issue. Mr. Parker requested that the motion be amended to add referring the file to ADOSH for investigation of the bloodborne pathogen standard. The motion was amended and the Commission unanimously assessed the recommended penalty of \$70.00.

Discussion & Action regarding Reappointment of Employment Advisory Council Member

Dani C. Green – Mr. Maruca advised that Ms. Green has served two terms on the Council and that the current term will expire December 31, 2009. Ms. Green has expressed her willingness to serve another term on the Council, and Mr. Maruca is recommending that she be reappointed. Ms. Green has made significant contributions towards helping the Council achieve its goal and has made an enthusiastic commitment to serve for the next three years. Following discussion, the Commission unanimously reappointed Ms. Green to the Employment Advisory Council for a new term effective January 1, 2010 through December 31, 2012 on motion of Mr. McCarthy, second of Mr. Lujano and asked Mr. Maruca to express the Commission's appreciation to Ms. Green for her service.

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

Ms. McGrory stated that 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

Mr. Wade stated that the Special Fund's response to the State's Motion for Summary Judgment will be filed tomorrow. The Superior Court has scheduled a telephonic hearing on January 4, 2010 related to the Motions to Intervene that were filed by the business and labor

groups.

Announcements

The Commission scheduled meetings for Thursday, January 7<sup>th</sup>, Wednesday, January 13<sup>th</sup>, Thursday, January 21<sup>st</sup> and Thursday, January 28<sup>th</sup>. Chairman Delfs suggested that the Commission continue to schedule weekly meetings one month in advance and that they can be cancelled if there is a light agenda. It was discussed that the statute does not require that the Commission meet weekly. It was also agreed that there was not a need to hold a meeting on Thursday, December 31<sup>st</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 1:35 p.m.

APPROVED:

THE INDUSTRIAL COMMISSION OF ARIZONA

By [Signature]  
Chairman

By [Signature]  
Vice Chairman

By [Signature]  
Member

ATTEST:

By [Signature]  
Member

Teresa Hilton  
Commission Secretary

By [Signature]  
Member