

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Wednesday, January 13, 2010 – 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 (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Administrator
	Noreen Thorsen	Claims Manager
	Mary Torres	Claims Receptionist
	Belia Herrera	Claims Receptionist
	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 present was Jason Weber of Snell & Wilmer.

Approval of Minutes of January 7, 2010 Meeting

The Commission unanimously approved the Minutes of January 7, 2010 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Notice of Proposed Rulemaking regarding Amendments to A.A.C. R20-5-601 (Standards for Construction Industry) and A.A.C. R20-5-602 (Standards for General Industry) which incorporate by reference amendments to 29 CFR 1910 Subpart A, G, I, L, Z, and amendments to 29 CFR 1926 Subpart C, D, R, Z, as published in Federal Register 73 FR 75568-75589, December 12, 2009 and additional amendments to 29 CFR 1910 Subpart A, G, I, Q, as published in Federal Register 74 FR 46350-46361, September 9, 2009

Darin Perkins summarized the proposed rulemaking and explained the likely impact on employers and workers. In response to a question from Mr. Parker, Mr. Perkins explained that the Commission has the ability to issue certain citations on a per employee basis and one of the rule changes clarifies this ability. Mr. Perkins responded to questions related to the circumstances that might warrant issuing a citation on a per employee basis. He also stated that after filing a Notice of Proposed Rulemaking, that stakeholders and the public would have the opportunity to comment on the proposed amendments. The Commission unanimously voted to proceed with the proposed rulemaking and directed staff to file a Notice of Proposed Rulemaking on motion of Mr. Lujano, second of Mrs. Weeks and those Commissioners present signed a Resolution to that effect.

Discussion & Action of ADOSH Discrimination Complaint

#09-56 Valentino Mutafov v Kids Gone Wild LLC dba Scottsdale Gymnastics - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Mutafov. In his complaint, Mr. Mutafov alleged that his employment was terminated in retaliation for his filing two workers' compensation claims. The employer's position was that Mr. Mutafov was terminated as the result of his unprofessional and unacceptable conduct, his lack of productivity, and failure to meet his job requirements and expectations.

Mr. Perkins reviewed Mr. Mutafov's employment history and the workers' compensation claims and responded to questions from the Commissioners. After reviewing results from the investigation, Mr. Perkins concluded that the evidence did not establish a connection between Mr. Mutafov's termination and the filing of workers' compensation claims and he recommended against pursuing the complaint further. The Commission unanimously voted not to pursue the complaint on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action of Proposed OSHA Citations and Penalties

International Flora Technologies, LTD
291 E. El Prado Court
Chandler, AZ 85225

Complaint
Yrs/Business - 35
Empl. Cov. by Insp. - 10

Site Location: 28633 W. Patterson Road, Buckeye, AZ 85326
Inspection #: S2603/313990426
Insp. Date: 11/10/09

SERIOUS - Citation 1, item 1 - An employee was operating a forklift without formal training and certification (1910.178(I)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS - Citation 1, item 2 - Employees were not trained in the recognition of hazards associated with working from a scissor lift (1926.454(a)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 3 - Two employees were working 17 1/2' above the ground level without the use of a fall protection system to prevent a fall (1926.501(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, item 4 - The employer did not implement a training program that instructed each employee in the recognition and avoidance of fall hazards associated with working at elevated heights of 6' or more above the ground without the use of a fall protection system (1926.503(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$4,750.00

TOTAL FORMULA AMT - \$4,750.00

Darin Perkins 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 \$4,750.00 on motion of Mr. Lujano, second of Mr. McCarthy.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers

2C09/10-0750	Arias Lath & Stucco, LLC
2C09/10-0441	Arizona Professional Transport, LLC
2C08/09-0884	Bonifacio Lomeli & Angelita Lomeli, Husband & Wife dba Lomeli's Childcare Center
2C09/10-0452	Bryon Dinwitty & Karla Dinwitty, Husband & Wife dba The Horseshoe Café aka B&K Industries
2C09/10-0266	Desert Comfort LLC dba Desert Comfort Assisted Living Home
2C09/10-0488	Group Manufacturing Services, Inc.
2C09/10-0496	Pete Ardelean & Lucia Ardelean, Husband & Wife dba Avant One Assisted Living aka Avant One

Mr. 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), civil penalties have been recommended. Mr. Wade stated that employer #0488 has obtained coverage effective January 7, 2010 and he recommended a reduced penalty of \$500.00 for this employer. Mr. Wade responded to questions from the Commissioners regarding employer #0488.

Mr. Wade, Ms. McGrory and Ms. Thorsen responded to questions from the Commissioners regarding the feasibility of implementing a system to track insurance coverage cancellations. Mr. Delfs questioned if there would be any value in sending a form letter to the employer when a notice of cancellation is received. Mrs. Weeks also suggested that the letter include a request for updated information to be returned to the Commission. Ms. McGrory stated that staff could probably implement this process subject to being able to compare policy cancellations with new policies to identify those employers that do not obtain a replacement policy. Projected costs for such a system was also discussed.

Mr. Wade recommended civil penalties of \$1,000.00 be assessed against employers #0750, 0441, 0884, 0452, 0266 and 0496.

Mrs. Weeks stated, and Mr. Lujano and Mr. Parker voiced their agreement, that she would not be inclined to reduce the penalty for employer #0488 since they had 88 employees and were without insurance for over one year. The Commission unanimously approved civil penalties of \$1,000.00 be assessed against employers #0750, 0441, 0884, 0452, 0266, 0488 and 0496 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Request for Renewal of Self Insurance Authority

Catholic Healthcare West – Renee Pastor presented staff's renewal report along with a current Dunn and Bradstreet credit rating. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority due to the Company's financial stability, large size with assets of just under \$11.7 billion, a clean audit report and acceptable bond scores and an acceptable credit rating. Mr. Lujano made a motion to approve continuance of self insurance authority.

Mrs. Weeks commented that if Arizona passed the Medicaid restriction on AHCCCS patients, there may be a financial impact to the employer since 46% of their revenue is from Medicaid. Ms. Pastor agreed and stated that such a change would likely affect all hospitals. In response to a question from Mr. Parker concerning the security, a letter of credit, Ms. Pastor

described the process to draw on a letter of credit. Mr. McCarthy seconded the motion and the Commission unanimously approved continuance of self-insurance authority.

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

Discussion &/or Action regarding Legislation

Ms. McGrory summarized the meeting that she and Scot Butler had with Representative McComish yesterday. She also summarized the meeting that she and Mr. Wade had with Mike Gardner (Triadvocates) last Monday regarding proposed legislation that would allow, subject to authorization by the Commission, private inspectors to conduct elevator inspections for ADOSH certification. She described this proposed legislation and other potential workers' compensation legislation. She responded to questions from the Commissioners regarding the proposed legislation.

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 there was nothing new to report.

Announcements

In view of the short agenda for next week, Mr. Delfs agreed to cancel the January 21, 2010 meeting and move those agenda items to the meeting on January 28, 2010. Ms. Hilton asked if the Commission wanted to schedule meetings for February. After reviewing their schedules, availability, and need to schedule weekly meetings, meetings were scheduled for February 4, 2010, February 18, 2010 and February 25, 2010 all at 1:00 p.m..

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 *James C. Delfs*
Chairman

By *Marvin Weeks*
Vice Chairman

By *Louis W. Lujano, Sr.*
Member

ATTEST:

By *J. A. McCaffrey*
Member

Teresa Hilton
Commission Secretary

By *D. J. ...*
Member