

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, March 18, 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 (video conference)
	Darin Perkins	Acting Director
	Andrew Wade	Chief Legal Counsel
	Noreen Thorsen	Claims Manager
	Catherine Bohland	Legal Counsel
	Gary Norem	Chief Financial Officer
	Glenn Hurd	Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:00 p.m. noting a quorum present. Also present was Scot Butler, the agency's lobbyist, and Teresa Yi of Snell & Wilmer.

Discussion &/or Action regarding Legislation

Scot Butler presented an update of the activity in the Seventh Special Session including the budget bills. Mr. Butler described the status of some of the bills of interest to the Commission.

Approval of Minutes of March 3, 2010 Meeting

The Commission unanimously approved the Minutes of March 3, 2010 on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of ADOSH Discrimination Complaint

#09-36 Robert McBurnie v City of Prescott - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. McBurnie. In his complaint, Mr. McBurnie alleged that he was discriminated against and received retaliation from his supervisors for bringing up a safety complaint and refusing to provide electrical cross-training to his co-workers, which resulted in poor performance reviews, a written reprimand and eventually termination. The complainant did not feel that he was a good trainer and alleges that the electrical cross-training would create an unsafe situation for his co-workers which could cause death or serious injury to them. The complainant did not want to assume the liability if a co-worker were to become injured performing electrical work after receiving his cross-training. The employer stated that Mr. McBurnie was laid off due to a downturn in the economy and poor performance. According to the employer, the complainant received a reprimand that was warranted, which led to his negative review.

Mr. Perkins responded to questions from the Commissioners. The Division recommendation was not to pursue the complaint because there was insufficient evidence to establish a connection between the alleged protected activity and any discrimination or retaliation. The Commission discussed Mr. McBurnie's refusal to provide training. Mr. Perkins explained that, in his view, refusal to train was not the protected activity and could be considered insubordination. Mr. Wade described the legal requirements to consider refusal to work as protected activity and the Commission discussed examples. Ms. Bohland described some of the factors to consider in determining whether there is sufficient evidence to support a discrimination claim and responded to questions from the Commissioners. Following further discussion, the Commission voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Lujano, with Mrs. Weeks voting against the motion.

Discussion & Action of Proposed OSHA Citations and Penalties

Manual H. Benitez dba Mission Stucco Systems LLC
2114 S. 4th Avenue
Tucson, AZ 85713

Planned
Yrs/Business – 7 mos.
Empl. Cov. by Insp. – 7

Site Location: 805 N. Cacher's Court, Casa Grande, AZ 85222

Inspection #: P0775/314168568

Insp. Date: 01/27/10

SERIOUS – Citation 1, item 1 – An employee was allowed to operate a forklift without being trained and evaluated in the safe operation of the truck (1910.178(l)(1)(i).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 2 – An employee was operating a forklift without the use of the seatbelt (1926.95(a).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

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 – Employees were working on a tubular welded frame horse scaffold 6' to 10' high, 2' wide and 30' long that was lacking mudsills (1926.451(c)(2).

Citation 1, item 3b – Employees were working on a tubular welded frame scaffold approximately 40' high, 50' long and 3' wide that had the legs resting on mud sills at the edge of an unstable 2' deep excavation (1926.451(c)(2)(i). There was another instance of this violation.

Citation 1, item 3c – Employees were working on a tubular welded frame horse scaffold 6' to 10' high, 30' long and 2' wide and were not provided with a safe means of access to the working platform (i.e. ladder) (1926.451(c)(1) There was another instance of this violation.

Citation 1, item 3d – Employees were working on a tubular welded frame horse scaffold 6' to 10' high, 30' long and 2' wide that was erected without the supervision and direction of a competent person qualified in scaffold erection (1926.451(f)(7). There were two other instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 4 – Employees were working on a tubular welded frame horse scaffold 6' to 10' high, 2' wide and 30' long that did not have any guardrails installed along the open sides to prevent employees from falling to the lower level below (1926.451(g)(4)(i).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1, item 5 – Employees were working on a tubular welded frame horse scaffold 6' to 10' high, 2' wide and 30' long and were not trained by a qualified person to recognize the hazards associated with the type of scaffold being used and how to control or minimize those hazards (1926.454(a).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL DIV. PROP. - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

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 \$3,750.00 on motion of Mr. Parker, second of Mr. Lujano.

Structures, Inc.
5010 E. Falcon Drive
Mesa, AZ 85215

Planned
Yrs/Business – 20
Empl. Cov. by Insp. – 25

Site Location: 1800 S. San Tan Village Pkwy, Gilbert, AZ 85297

Inspection #: A7746/314074824

Insp. Date: 12/23/09

SERIOUS – Citation 1, item 1 – An employee was moving materials on a roof without fall protection (1926.501(b)(1).

(Two inspections in the past three years with no violations).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – Employees were not protected from falling through a floor hole by a guardrail system, cover, or personal fall arrest system (1926.501(b)(4)(i).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL DIV. PROP. - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

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

American Openings, Inc.
P.O. Box 22770
Tucson, AZ 85734

Planned
Yrs/Business – 15
Empl. Cov. by Insp. – 50

Site Location: 6885 E. Southpoint Road, Tucson, AZ 85706

Inspection #: N5645/314168378

Insp. Date: 01/26/10

SERIOUS – Citation 1, item 1 – The loft was decked to within 16" of the north wall, creating an open side more than 4' above the ground floor level that was not guarded (1910.23(c)(1).

(Three inspections with one serious violation in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 2 – Punch presses did not have point of operation guarding installed (1910.212(a)(3)(ii). There was another instance of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 3 – The circular saw blade near the operator's controls of the casing saw was not guarded (1910.213(a)(12).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 4 – A radial arm saw did not have the lower blade guarded (1910.213(h)(1).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 5 – An 8" jointer was equipped with an ineffective guard that did not prevent the operator's hand from coming into contact with the revolving knives 91910.213(j)(3).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 6 – A horizontal belt sander was not provided with a guard at each nip point (1910.213(p)(4).

Div. Proposal - \$1,200.00

Formula Amt. - \$1,200.00

SERIOUS – Citation 1, item 7 – The guard covering the end of the motor shaft was missing on a radial arm saw (1910.219(c)(4)(i). There was another instance of this violation.

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 8 – The guard on a right angle grinder was removed (1910.243(c)(3).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 9 – The power cord from the on/off switch to the motor of the radial arm saw was damaged, exposing the electrical conductors (1910.303(b)(1).

Div. Proposal - \$ 1,500.00

Formula Amt. - \$ 1,500.00

TOTAL DIV. PROP. - \$13,200.00

TOTAL FORMULA AMT. - \$13,200.00

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, Mr. Lujano made a motion to assess the recommended penalty of \$13,200.00. Mr. Parker questioned the standard cited in Citation 1, item 1 and stated that he felt it would be more appropriate to use a nonserious designation. Mr. Perkins explained the standard and the Division recommendation. Following further discussion, Mr. Lujano renewed his motion which was seconded by Mr. McCarthy and unanimously approved.

Discussion & Action of Request for Lump Sum Commutation

Mary Folen #20072-270392 - Noreen Thorsen presented this lump sum petition. She advised that Ms. Folen requested a lump sum commutation of her unscheduled award of \$339.88 per month (present value \$79,545.52) in order to rent an apartment and provide for her living expenses for a one year period. She wants to purchase an automobile, lap top computer and furniture and also wants to pay back family members for personal loans and put some money into savings and C.D.'s. Ms. Folen subsequently had advised that with her family's help, she has

rented an apartment and that she also needs dental work performed. Ms. Folen is unemployed. She lists no other source of income.

Ms. Thorsen advised that her recommendation is for approval, since the lump sum proceeds will help Ms. Folen repay some debts, get some much needed dental work done, purchase a car and provide for a place to live. In addition, Ms. Thorsen opined that having reliable transportation will assist Ms. Folen in looking for employment. Following discussion, the Commission unanimously approved the lump sum request on motion of Mr. McCarthy, second of Mr. Lujano.

Discussion & Action of Proposed Civil Penalties against Uninsured Employers.

2C09/10-0859	Additional Biz, LLC
2C09/10-0763	Alliance Building Systems of Arizona, LLC
2C09/10-0806	Anthony Medina & Lisa Medina, Husband & Wife dba Desert Mountain Landscape & Maintenance
2C09/10-1286	Ca-Tel, LLC
2C09/10-0948	Canyon Tanning L.L.C. dba Glo Tanning
2C09/10-0993	Creekside Entertainment, L.L.C. dba Schenpf Farms
2C09/10-0754	Flight Trails Helicopters, Inc. (A California Corporation)

Mr. Wade advised that he is recommending removing #1286 from consideration and recommends further investigation into the employer's legal name. With regard to the remaining employers, a compliance investigation confirmed that they 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 of \$1,000.00 have been recommended against the remaining listed employers. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission. The Commission unanimously approved civil penalties of \$1,000.00 against employers #0859, 0763, 0806, 0948, 0993 and 0754 on motion of Mr. Parker, second of Mr. Lujano and referred files for #0763 and 0754 to ADOSH for investigation since these are hazardous occupations.

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

Mr. Perkins advised 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 there was nothing new to report.

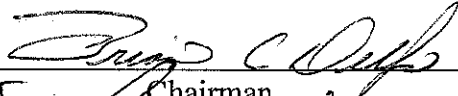
Announcements and Scheduling of Future Meetings

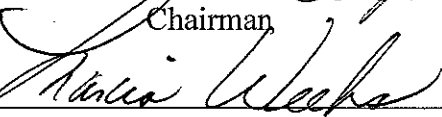
Mr. Wade stated that there has been a request for hearing filed against a denial for lump sum commutation. The injured worker lives in Los Angeles and has requested that he be permitted to appear before the Commission by video teleconferencing. Chairman Delfs agreed to waive the rule that requires an injured worker appear at a hearing in person. Future meetings were scheduled for April 1, 8 and 15. The commutation hearing was tentatively scheduled for April 15th. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, March 25th.


There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:20 p.m.

APPROVED:

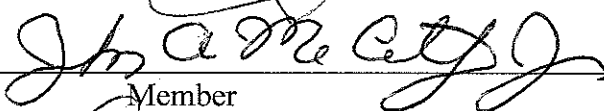
THE INDUSTRIAL COMMISSION OF ARIZONA


By 
Chairman

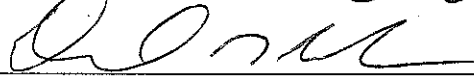
By 
Vice Chairman

By 
Member

ATTEST:

By 
Member


Commission Secretary

By 
Member