

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 W. Washington

Conference Room 308

Phoenix, Arizona 85007

Thursday, April 8, 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)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Randall Maruca	Director, Labor Dept.
	Gary Norem	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Teresa Hilton	Commission Secretary

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

Approval of Minutes of April 1, 2010 Meeting

The Commission unanimously approved the Minutes of April 1, 2010 on motion of Mr. Lujano, second of Mrs. Weeks. Mr. Lujano asked for clarification of changes to the draft Minutes in relation to Mr. Parker's comments regarding OSHA rulemaking. Mr. Parker repeated his comment from the prior meeting and explained that the change was to better present his comment regarding OSHA rulemaking authority.

Discussion & Action of ADOSH Discrimination Complaint

#10-21 June Martin v Sun Orchard, Inc. - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Martin. In her complaint, Ms. Martin alleged that she was terminated after taking time off due to adverse health consequences of chemical exposures at work. The employer's position is that Ms. Martin was terminated as a result of tardiness and absences unrelated to any chemical exposure.

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 protected activity (Martin's complaint to management regarding odors in her workplace making her ill) and the adverse action (Martin's termination). Following further discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mrs. Weeks.

Discussion & Action of Proposed OSHA Citations and Penalties

Arizona State Fair  
1826 W. McDowell Road  
Phoenix, AZ 85007

Planned  
Yrs/Business – 24  
Empl. Cov. by Insp. – 47

Site Location: 1826 W. McDowell Road, Phoenix, AZ 85007  
Inspection #: Z5834/314224866  
Insp. Date: 02/10/10

SERIOUS – Citation 1, item 1 – Two workers were working from an aerial lift at a height of 20' above ground level without wearing a body harness or body belt with a lanyard (1926.453(b)(2)(v)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – Two employees were working from the top of the stage cover 20' above ground level without utilizing a fall protection system or other equivalent means to prevent a fall (1926.501(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – Two employees working from the top of the stage 20' above ground level had not been provided training to recognize the hazards of falling or in the procedures to be followed in order to minimize these hazards (1926.503(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

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. Lujano, second of Mr. McCarthy.

R & G Vent Cleaning Services, Inc.  
563 E. Juanita Avenue  
Mesa, AZ 85204

Planned  
Yrs/Business – 16  
Empl. Cov. by Insp. – 32

Site Location: 563 E. Juanita Avenue, Mesa, AZ 85204  
Inspection #: A7746/314142340  
Insp. Date: 01/12/10

SERIOUS – Citation 1, item 1 – A hazard assessment to determine what type of hazards are present in the workplace and what type of PPE employees must utilize to protect themselves from those hazards had not been conducted (1910.132(d)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 2 – The employer did not ensure that employees utilizing caustic liquids and powders wore appropriate eye or face protection (1910.133(a)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

TOTAL DIV. PROP. - \$2,500.00

TOTAL FORMULA AMT - \$2,500.00

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 \$2,500.00 on motion of Mr. Lujano, second of Mrs. Weeks.

Discussion & Action regarding Appointment of New Employment Advisory Council Member

Martha A. Rockwell – Randall Maruca introduced Ms. Rockwell to the Commissioners and explained the composition of the Employment Advisory Council. He advised that the seven members serve three year terms, and the current vacancy is for a representative from the employment agency sector. Mr. Maruca gave a brief history of Ms. Rockwell’s employment and volunteer experience and provided her résumé. Ms. Rockwell responded to questions from the Commissioners. The Commission unanimously appointed Ms. Rockwell to the Employment Advisory Council on motion of Mr. Lujano, second of Mr. McCarthy and thanked her for being willing to serve.

Discussion &/or Action regarding Legislation

Scot Butler presented an update of legislation of interest to the agency, including HB 2228, SB 1070, SB 1242, and SB 1045. The Commission discussed the proposed legislation in the strike-all (SB 1045) with regard to the privatization of the State Compensation Fund. After discussion, the Commission agreed that SB 1045 does not provide sufficient time to enact and implement statutory and rule changes required to ensure an orderly transition and that the State Compensation Fund should be continued through this transition period. The Commissioners agreed that they will not oppose SB 1045 if the State Compensation Fund is continued through the period of time required to enact and implement the necessary legislative and rule changes. After further discussion, the Commission agreed that this time period should be the end of June 2012.

Discussion & Action of Proposed Civil Penalties against Uninsured Employers.

2C09/10-1545	67 <sup>th</sup> Avenue Holdings, LLC dba Roadrunner Landcare
2C09/10-1208	John Donley & Melinda Donley, Husband & Wife dba Donley Farms
2C09/10-0949	Daehan, LLC dba Seasoned Cork

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 of \$1,000.00 have been recommended against these employers. Mr. Wade provided additional information regarding these employers and responded to questions from the Commission. Following discussion, the Commission unanimously approved civil penalties of \$1,000.00 against employers #1545, 1208 and 0949 on motion of Mr. Lujano, second of Mr. McCarthy.

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

Ms. McGrory advised that there was nothing new to report and that the agency continues to prepare for the mandatory furlough and elimination of performance pay.

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

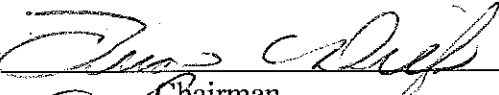
Mr. Wade advised that the Arizona Supreme Court has denied review in the high deductible policy lawsuit.

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, April 15<sup>th</sup>. Additional meetings were scheduled for Thursday, April 29<sup>th</sup>, Thursday, May 13<sup>th</sup> and Wednesday, May 19<sup>th</sup>. A meeting may be scheduled for April 22<sup>nd</sup> if needed.

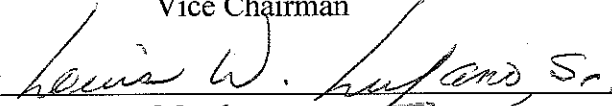
There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:20 p.m.

APPROVED:

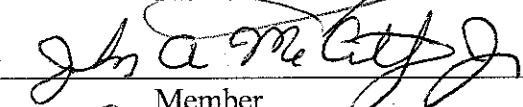
THE INDUSTRIAL COMMISSION OF ARIZONA

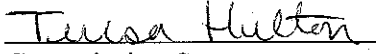
By   
Chairman

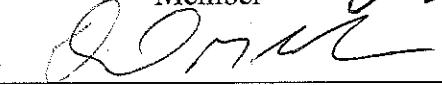
By   
Vice Chairman

By   
Member

ATTEST:

By   
Member

  
Commission Secretary

By   
Member