

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 W. Washington
Conference Room 308
Phoenix, Arizona 85007
Thursday, December 16, 2010 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Harriet Turney	Chief Admin. Law Judge
	Sylvia Simpson	Controller
	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 Jeff Gray.

Approval of Minutes of December 8, 2010 Meeting

The Commission approved the Minutes of December 8, 2010 on motion of Mr. McCarthy, second of Ms. Strickler. Ms. Oster abstained.

Discussion & Action of Proposed OSHA Citations and Penalties

The Uni-Kool Partners
2210 E. 24th St.
Yuma, AZ 85364

Site Location: 24040 E. 24th St., Yuma, AZ 85364
Inspection #: A9339/314698549
Insp. Date: 07/07/10

Fatality
Yrs/Business – 28
Empl. Cov. by Insp. – 15

SERIOUS – Citation 1, item 1 – The forklift operator was not utilizing the seatbelt, which was connected behind the seat. (1910.132(a)).

(There is no citation history with this company).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

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 2a – Front end attachments were installed on the company's forklifts without the manufacturer's approval. The attachments affected the lifting capacity of the lifts and employees were unaware of the capacity change. (1910.178(a)(4)).

Citation 1, Item 2b – Employees operated the forklifts using a clamp-on steering knob. (1910.178(q)(6)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

SERIOUS – Citation 1, item 3 – Forklift operators were not adequately trained in the safe operation of the trucks. (1910.178(l)(1)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1, item 4 – Forklifts were not inspected prior to each use. (1910.178(q)(7)).

Div. Proposal - \$ 1,750.00

Formula Amt. - \$ 1,750.00

TOTAL PENALTY - \$19,250.00

TOTAL FORMULA AMT. - \$19,250.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for items 1 and 3 was for the gravity based penalty with no adjustment factors since these violations directly related to the fatality. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$19,250.00 on motion of Mr. McCarthy, second of Ms. Oster.

Con-Wear Products, Inc.

2914 N. Norfolk

Mesa, AZ 85215

Accident

Yrs/Business – 7

Empl. Cov. by Insp. – 4

Site Location: 27905 S. Republic Rd., San Manuel, AZ 85631

Inspection #: N5645/314857038

Insp. Date: 09/08/10

SERIOUS – Citation 1, item 1 – Employees salvaging metal roof panels 22' above the lower floor were not protected from falling (1926.501(b)(1)).

(No inspection history in the past three years).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

SERIOUS – Citation 1, item 2 – When requested, the employer could not produce a written engineering survey performed by a competent person prior to permitting employees to start demolition operations (1926.850(a)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

NONSERIOUS – Citation 2, item 1 – The employer, having more than 10 employees at any one time during the previous calendar year, did not keep OSHA injury and illness records (1904.0001(a)(2)).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$10,300.00

TOTAL FORMULA AMT. - \$10,300.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for items 1 and 2 was for the gravity based penalty with no adjustment factors since these violations directly related to the serious injury. Following discussion and inspection of photographs of these violations, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$10,300.00 on motion of Mr. Parker, second of Ms. Strickler.

Central Arizona College
8470 N. Overfield Road
Coolidge, AZ 85228-9778

Planned
Yrs/Business – 52
Empl. Cov. by Insp. – 35

Site Location: 8470 N. Overfield Road, Coolidge, AZ 85228
Inspection #: N5645/314698614
Insp. Date: 07/08/10

SERIOUS – Citation 1, item 1 – Employees using a caustic water treatment solution containing sodium hydroxide were not provided with suitable facilities for quick drenching or flushing of the eyes for immediate emergency use (1910.151(c)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS – Citation 1, item 2 – The fan blades on a portable carpet fan were not guarded (1910.212(a)(5)).

Div. Proposal - \$750.00

Formula Amt. - \$1,500.00

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 – An energized light relay was not guarded against accidental contact in that the cabinet was not locked or a dead front or other form of approved enclosure installed (1910.303(g)(2)(i)).

Citation 1, item 3b – A 209 volt circuit breaker panel had two missing circuit breakers creating openings that were not effectively closed (1910.305(b)(1)(ii)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

GROUPED SERIOUS – The alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for illness.

Citation 1, item 4a – A written exposure control plan for employees having occupational exposure was not established by the employer (1910.1030(c)(1)(i)).

Citation 1, item 4b - The employer having employees with occupation exposure did not prepare an exposure determination (1910.1030(c)(2)(i)).

Citation 1, item 4c - Employees who declined the hepatitis B vaccination offered by the employer did not sign a declination statement (1910.1030(f)(2)(iv)).

Citation 1, item 4d - Employees with occupational exposure did not participate in a training program (1910.1030(g)(2)(i)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$6,375.00

TOTAL FORMULA AMT. - \$7,125.00

Mr. 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 \$6,375.00 on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding Adoption of Proposed Rulemakings Amending 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 from 29 CFR 1926 Subpart Z and 29 CFR 1910 Subpart Z, Toxic and Hazardous Substances, as published in Federal Register Vol. 75, No. 51, 12681-12686, March 17, 2010 and which became a final rule effective June 15, 2010 and additionally incorporating by reference amendments from 29 CFR 1926 Subpart R, Steel Erection, published in the Federal Register Vol. 75, No. 94, 27429, May 17, 2010 and 29 CFR 1926 Subpart CC, Cranes and Derricks in Construction, as published in the Federal Register Vol. 75, No. 152, 47906-48177, August 9, 2010.

Mr. Perkins described the amendments needed to the Standards for Construction Industry and Standards for General Industry and more specifically to the Hexavalent Chromium, Steel Erection, and cranes and derricks standards. The most significant change is the adoption of the new cranes and derricks standard. Mr. Parker commented that he has heard positive feedback regarding ADOSH's presentation on the new cranes and derricks standard. Mr. Parker stated that those in attendance were very impressed with staff's proposal and was in full support of the changes. Mr. Perkins responded that the cranes and derricks standards have been a long time coming and are needed. The Commission unanimously approved the proposed rulemaking and directed staff to proceed with the rulemaking on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C10/11-0475	All American Lending Group, Limited Liability Company
2C10/11-0487	Do Fancy Nail Salon & Spa, Inc. dba Fancy Nails Salon & Spa aka Tuyen A. Do dba Fancy Nail & Spa
2C10/11-0285	L.J. Roth Reconstruction, Inc. dba Premier Restoration
2C10/11-0736	Prescott Child-Development Center aka Prescott Child Development Center, Inc.

Mr. Wade advised that with regard to the above listed 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 are recommended against each of these employers. Employer #0475 obtained insurance effective November 15, 2010 and Mr. Wade recommended no penalty. With regard to the remaining three employers, Mr. Wade recommended civil penalties of \$1,000.00. Mr. Wade responded to questions from the Commissioners. Following discussion, Mr. Parker made a motion to assess no penalty against employer #0475, a civil penalty of \$250.00 against employer #0487 in consideration of the size of the employer, and penalties of \$1,000.00 against employers 0285 and 0736, which was seconded by Ms. Strickler. Mr. Delfs pointed out that employer #0487 did have a no insurance claim. Mr. Parker amended his motion to assess a civil penalty of \$500.00 against employer #0487 and the motion was seconded by Ms. Oster and passed unanimously.

Discussion &/or Action regarding Legislation

Laura McGrory summarized the meetings she and Scot Butler had over the last week. She reviewed the draft Arizona Workers' Compensation At A Glance handout and explained the text and the graphics.

Ms. McGrory also provided drafts of five legislative proposals described as: Reporting Requirements for a Deductible Policy, Administrative Tax on Deductible Policies, Special Fund Assessment on Deductible Policies, Special Fund Assessment on Deductible Policies, Self-Insured Assessment, and Assignment and Processing of Insolvent Carrier Claims. She and Scot Butler summarized each and responded to questions from the Commissioners. Ms. McGrory and Mr. Butler summarized the bill folders they are recommending be opened and Mr. Butler described the process from opening a bill folder to having a bill introduced. Following discussion, Ms. McGrory stated that staff would proceed with the legislative agenda if the Commissioners agreed and absent any objection, staff would proceed. There was no objection.

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

Ms. McGrory 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 oral arguments were heard on Friday, December 10, 2010 and that Superior Court Judge Larry Grant denied the State's Motion for New Trial, and affirmed his prior decision that the Legislature exceeded its authority in attempting to sweep funds from the Special Fund.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, January 6, 2011

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) and (2) for discussion and consideration of applicants for Assistant Chief Administrative Law Judge position of the Industrial Commission. The names of the applicants are confidential pursuant to A.A.C. R2-5-202.

The Commission unanimously voted to go into Executive Session on motion of Mr. McCarthy, second of Mr. Parker. Executive Session Minutes are kept separately.

General Session – Discussion and Action regarding Appointment of Assistant Chief Administrative Law Judge.

Upon return to General Session, Mr. Parker made a motion to offer the position to candidate #2, which was seconded by Ms. Strickler and unanimously approved. Mr. Parker made an additional motion that in the event candidate #2 does not accept the appointment, that candidate #1 be offered the position, which was seconded by Ms. Strickler and unanimously approved.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:50 p.m.

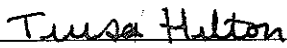
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary