

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, February 23, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman (telephonic)
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Noreen Thorsen	Claims Manager
	Randall Maruca	Director, Labor Dept.
	Harriet Turney	Chief Administrative Law Judge
	Renee Pastor	Self Insurance Manager
	Michael Hawthorne	Chief Financial Officer
	Miral Sigurani	Legal Counsel
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Others in attendance included Scot Butler, the agency's lobbyist; Terence J. Fox, attorney at law; Darryl Engle, attorney at law; Stephen L. Weiss, attorney at law; Steven C. Lester, attorney at law, Jeff Gray, and Eda Barolli of Snell & Wilmer.

Approval of Minutes of February 9, 2011 Meeting

The Commission unanimously approved the Minutes of February 9, 2011 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion &/or Action regarding Legislation

Scot Butler provided an update of proposed legislation of interest to the Commission. Mr. Butler discussed SB's 1102, 1264 and 1567 and HB's 2151, 2176, 2476, 2584, 2616 and 2617 and responded to questions from the Commission. Mr. Butler noted he has provided the Commissioners an analysis and recommendations with respect to HB 2617. In addition, e-mail comments about the bill have been received from attorneys Arthur Gage, Darryl Engle, Debra Runbeck and James Stevenson and those comments have been provided to the Commissioners.

Steven Lester explained his concerns about HB 2617 and described a possible solution to one of those concerns. Stephen Weiss reminded the Commission that he had addressed the Commission at the last meeting and he described another concern he had with the constitutionality of the proposed legislation. Darryl Engle expressed concerns about the bill and the impact the proposed legislation may have on injured workers and the potential shifting of costs for industrial injuries from industry to the taxpayer/public sector. Terrence Fox also expressed concern over the potential shifting of liability for industrial injuries and asked that the

Commission not support the legislation. Jeff Gray addressed the Commission and spoke in favor of the bill and stated that a letter summarizing support for the bill will be delivered to the Commission soon.

Mr. Butler stated that substantially similar legislation was introduced in 2008 and the Commission opposed the legislation. He described the main areas of concern with the 2008 legislation and stated that those concerns remain. He stated that staff would need direction from the Commission and he made recommendations to the Commission regarding that direction.

Mr. Delfs moved to authorize staff and Mr. Butler to meet with sponsors and stakeholders of HB 2617 to discuss those concerns that were identified today and in 2008 and to discuss possible mitigating concepts or language and then report back to the Commission regarding whether to change the Commission's prior position or whether to take any position at all. The motion was seconded by Mr. McCarthy. Mr. Parker commented about the current practices with settlement agreements and he questioned the impact that the proposed legislation would have on current practices and whether there was sufficient time in the current legislative session to work on the issue. Ms. McGrory responded to Mr. Parker's question regarding the impact. Mr. Butler stated that it would be approximately 30 days before the bill came up for a full vote and if the motion is approved he would set up meetings with sponsors and interested parties as soon as possible. Ms. Oster stated that she has been involved with workers' compensation claims processing in multiple jurisdictions and that while other states may use full and final settlements, they also have different components to their workers' compensation systems that need to be understood. She described differences between Arizona's system and the systems of other states cautioning that the differences in Arizona's system need to be considered in this discussion. She also stated that if the proponents are going to refer to the settlement practices of other states, that she would want to review more carefully what those practices are in the other states. The motion was unanimously approved.

Executive Session pursuant to A.R.S. §§38-431.03(A)(1) and (2) for discussion and consideration of applicants for 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 Ms. Oster. Executive Session Minutes are kept separately.

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

Upon return to General Session, Mr. McCarthy made a motion to offer the position to candidate #2, which was seconded by Ms. Oster and unanimously approved.

Discussion & Action of ADOSH Discrimination Complaint

#10-72 Mary C. De Witte v Everest College - Mesa - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. De Witte. In her complaint, Ms. De Witte alleged that she was hired as a full time instructor. After working one week, she claims Mr. Griego, her supervisor, was so impressed with her that he told her that he wanted to groom her for his position and wanted her to document every problem she saw with the instructors and students. According to Ms. De Witte, he wanted her to be his eyes and ears at the college but, shortly after she started documenting infractions, she was repeatedly retaliated

against in the form of repeated demotions and her untimely termination. In response to the complaint, the employer stated that Ms. De Witte was not harassed or retaliated against in any way. According to the employer, Ms. De Witte was hired as an on call instructor, which is a part time position and she was never demoted, placed in a hostile work environment or harassed.

Mr. Perkins presented a history of Ms. De Witte's employment and chronology of events and responded to questions from the Commission. Mr. Perkins explained that following her termination, Ms. De Witte filed a safety and health complaint and a discrimination complaint with ADOSH. She participated in protected activity by complaining to the Academic Dean, Campus President and the MA Director about safety and health issues at the college but there is no evidence of a connection between the protected activity and any adverse action. The Division recommendation was not to pursue the matter. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Specialty Companies Group, LLC
22223 N. 16th Street
Phoenix, AZ 85024

Complaint
Yrs/Business – 8
Empl. Cov. by Insp. – 50

Site Location: 22223 N. 16th Street, Phoenix, AZ 85024
Inspection #: A7746/315150573
Insp. Date: 12/03/10

SERIOUS – Citation 1, item 1 – Employees entered confined spaces (sanitary sewers) where the internal atmosphere had not been tested with a calibrated direct-reading instrument and found safe for oxygen deficiency, presence of explosive gases and vapors, and potential toxic contaminants (23.403(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 required to enter confined spaces (sanitary sewers) had not been provided training regarding the nature of the hazards involved, the necessary precautions to be taken and the use of protective and emergency equipment required to enter confined spaces (1926.21(b)(6)(i).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, item 3 – Employees were not provided potable water at the worksites by the employer (1926.51(a)(1).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,500.00 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Request for Lump Sum Commutation

Lee Smith #20092-870547 – Noreen Thorsen presented this lump sum petition. Ms. Thorsen advised that the Division's recommendation is for approval. Ms. Thorsen explained how commuting the scheduled award would result in the financial betterment or rehabilitation of the claimant. In summary, the lump sum proceeds will allow Ms. Smith to re-establish her business and move in to her own apartment. Following discussion, the Commission approved the lump sum request on motion of Ms. Oster, second of Mr. Delfs. Mr. McCarthy had recused himself from the discussion and did not participate in the vote.

Discussion & Action of Applications for New Employment Agency Licenses

Deborah Knox dba Life Work Transitions
James D. Paisley, Ph.D. on behalf of Paisley Career Transition Services, L.L.C.
Linda J. Baugh on behalf of Ace Executive Careers, LLC

Randall Maruca advised that these applicants are all career counseling services and have been investigated by the Labor Department as required by the Revised Statutes and Rules governing Private Employment Agencies. The Employment Advisory Council has recommended approval of these licenses. Following discussion, the Commission unanimously approved the licenses on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Request for Renewal of Self Insurance Authority

City of Phoenix - Renee Pastor presented staff's renewal report along with current Moody's and Dunn and Bradstreet bond and credit ratings. She responded to questions from the Commissioners. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial stability; protections afforded it as a governmental entity, and a clean audit report. Following discussion, the Commission unanimously approved continuance of self-insurance authority on motion of Mr. Parker, second of Ms. Oster. Mr. Parker described information he thought would be helpful and requested that information be included in staff's report on renewal requests.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

2C09/10-2312 Daniela Scott, a Single Woman, dba Royal Palm
Assisted Living Home #2
2C10/11-0910 Direct Internet Solutions, LLC dba Internet
Business Strategies, LLC
2C10/11-1281 Y Cab, L.L.C. dba Yuma City Cab
2C10/11-0855 WF Financial, LLC dba Elite Auto Financing
2C10/11-1120 Mariscos de Guaymas, L.L.C. dba Pescaderia
Seafood Market
2C10/11-0965 Oasis RV Center, Inc.
2C10/11-0685 O.H.M.N.I. Incorporated
2C10/11-1014 Wilmot Restaurant, L.L.C. dba The Taco Shop Co.

Andrew 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 of \$500.00 are recommended against employers #0855 and 0685 since they have recently obtained coverage. Mr. Wade further advised that civil penalties of \$1,000.00 are recommended against employers #2312, 0910, 1281, 1120, 0965 and 1014. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously assessed civil penalties of \$500.00 against employers #0855 and 0685 and civil penalties of \$1,000.00 against employers #2312, 0910, 1281, 1120, 0965 and 1014 on motion of Mr. McCarthy, second of Ms. Oster.

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

Ms. McGrory stated there was nothing new to report.

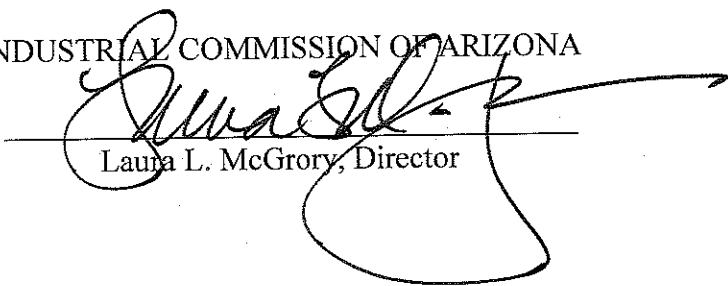
Announcements and Scheduling of Future Meetings

Ms. McGrory advised that she would have recommendations from the Network Work Group and Fee Schedule recommendations for a future meeting. Ms. Hilton reminded the Commissioners that the next meeting is scheduled for Thursday, March 3rd. Additional meetings were scheduled for Thursday, March 10th and Thursday, March 31st.

There being no further business to come before the Commission and no further public comment, Vice Chairman Parker adjourned the meeting at 2:35 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary