

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, March 31, 2011 – 1:00 p.m.

Present:	Brian Delfs	Chairman
	David Parker	Vice Chairman
	John A. McCarthy, Jr.	Member
	Kathleen Oster	Member
	Susan Strickler	Member
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Renee Pastor	Self Insurance Manager
	Sylvia Simpson	Controller
	Teresa Hilton	Commission Secretary

Chairman Delfs convened the Commission meeting at 1:08 p.m. noting a quorum present. Others in attendance included Scot Butler, the agency's lobbyist; Alexis Burns; and Eda Barolli of Snell & Wilmer.

Approval of Minutes of March 10, 2011 Meeting

The Commission approved the Minutes of March 10, 2011 on motion of Mr. McCarthy, second of Mr. Parker. Mr. Delfs abstained

Discussion &/or Action regarding Legislation

Scot Butler provided an update of proposed legislation of interest to the Commission. Mr. Butler discussed HB's 2151, 2476, 2541, 2584, 2616 and 2617 and SB's 1102, 1264 and 1567 and responded to questions from the Commissioners. Laura McGrory further discussed HB 2584 and the pilot program. She will be making recommendations to the Commission to set up the task force. With regard to HB 2617, following further discussion, the Commission unanimously agreed to take a neutral position on the bill as amended in the Senate on motion of Mr. Parker, second of Mr. McCarthy. Mr. Butler stated that discussions between the Governor and House and Senate concerning the state budget are continuing.

Discussion & Action of Proposed OSHA Citations and Penalties

Classic Roofing, LLC  
2744 W. Virginia Avenue  
Phoenix, AZ 85009

Planned  
Yrs/Business - 27  
Empl. Cov. by Insp. - 7

Site Location: 2500 E. Van Buren Street, Phoenix, AZ 85008  
Inspection #: N4762/315150854  
Insp. Date: 12/13/10

SERIOUS - Citation 1, item 1 - There was no midrail installed between the top edge of the 1/4" wire rope guardrail system and the working surface of the roof when there was no wall or parapet wall at least 21' high (1910.502(b)(2)).  
(1 serious citation in the past three years).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 2 - The opening in the guardrail system where the ladder accessed the roof was greater than 19" wide between the edge of the ladder and the first post of the guardrail system (1910.502(b)(2)(iv)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS - Citation 1, item 3 - An employee working at heights greater than 6' and exposed to falls was not provided training to recognize the hazards of falling or the procedures to be followed in order to minimize these hazards (1910.503(a)(1)).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

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 \$4,500.00 on motion of Ms. Oster, second of Ms. Strickler.

Rush Truck Centers of Arizona Inc.  
dba Rush Truck Center, Tucson  
755 E. 44<sup>th</sup> Street  
Tucson, AZ 85713

Complaint  
Yrs/Business - 10  
Empl. Cov. by Insp. - 22

Site Location: 755 E. 44<sup>th</sup> Street, Tucson, AZ 85713  
Inspection #: F3875/315247429  
Insp. Date: 01/19/11

SERIOUS - Citation 1, item 1 - Forklift operators were operating the forklifts without the use of a seatbelt (1910.132(a)).

(No inspection history in the past three years).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

SERIOUS - Citation 1, item 2 - The wire rope to the 7 1/2 ton overhead crane had severe kinking and crushing (1910.179(m)(1)).

Div. Proposal - \$1,875.00

Formula Amt. - \$1,875.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

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

W. Lay, Inc.  
601 W. Elwood Street  
Phoenix, AZ 85041

Complaint  
Yrs/Business – 4  
Empl. Cov. by Insp. – 2

Site Location: 601 W. Elwood Street, Phoenix, AZ 85041

Inspection #: A7717/315247130

Insp. Date: 12/03/10

REPEAT SERIOUS – Citation 1, item 1 – One employee was operating a horizontal bandsaw which did not have the unused portion of the saw blade guarded (1910.212(a)(1)).

W. LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667510) WHICH WAS ISSUED ON 9/7/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ.

(Two inspections with 8 serious and 16 nonserious violations in the past three years).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

REPEAT NONSERIOUS – Citation 2, item 1 – Two exit doors were not marked by a readily visible "EXIT" sign (1910.37(b)(2)).

W. LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667510) WHICH WAS ISSUED ON 9/7/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ.

Div. Proposal - \$400.00

Formula Amt. - \$400.00

REPEAT NONSERIOUS – Citation 2, item 2 – Frequent inspections were not conducted on four overhead cranes (1910.179(j)(2)).

W. LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667510) WHICH WAS ISSUED ON 9/7/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ.

Div. Proposal - \$400.00

Formula Amt. - \$400.00

REPEAT NONSERIOUS – Citation 2, item 3 – Four overhead cranes were lacking a periodic inspection (1910.179(j)(3)).

W. LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667510) WHICH WAS ISSUED ON 9/7/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ.

Div. Proposal - \$400.00

Formula Amt. - \$400.00

REPEAT NONSERIOUS – Citation 2, item 4 – A pendant control for an overhead crane was not kept clean and function labels kept legible (1910.179(l)(3)(iii)(d)). There was another instance of this violation.

W. LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667510) WHICH WAS ISSUED ON 9/7/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ

Div. Proposal - \$400.00

Formula Amt. - \$400.00

REPEAT NONSERIOUS – Citation 2, item 5 – A plastic red gas container and a white five gallon container were not labeled, tagged or marked identifying the substance contained therein (1910.1200(f)(5)(i)).

W LAY INC. WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS STANDARD (314667528) WHICH WAS ISSUED ON 7/15/10 AT WORKPLACE LOCATION 438 W. WATKINS STREET, PHOENIX, AZ.

Div. Proposal - \$400.00

Formula Amt. - \$400.00

SERIOUS – Citation 3, item 1 – The horizontal shaft was not guarded on the motor of a gantry crane (1910.219( c)(2)(i)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 3, item 2 – An electrical panel was lacking thirteen 1" x 2" circuit breakers or blankout covers to prevent accidental contact with electrical components (1910.305(b)(1)(ii)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

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 increased the penalties for Citation 1, item 1; Citation 2, item 1; Citation 2, item 2; Citation 2, item 3; Citation 2, item 4 and Citation 2, item 5, to the gravity-based penalties with no adjustment factors due to the repeat nature of the violations for a total penalty of \$12,000.00 on motion of Mr. Parker, second of Ms. Oster.

Wholesale Dentistry Group LLC  
dba Deer Valley Smiles  
3414 W. Union Hills, #14  
Phoenix, AZ 85027

Complaint  
Yrs/Business – 2  
Empl. Cov. by Insp. – 17

Site Location: 3414 W. Union Hills, #14, Phoenix, AZ 85027

Inspection #: N9589/315297853

Insp. Date: 02/18/11

SERIOUS – Citation 1, item 1 – Live parts of a 220 volt motor were not guarded against accidental contact by approved cabinets or other forms of approved enclosures (1910.303(g)(2)(i)).

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1, item 2a – The employer having employees with occupational exposure to bloodborne pathogens did not establish a written Exposure Control Plan designed to eliminate or minimize employee exposure (1910.1030( c)(1)(i)).

Citation 1, item 2b - The employer did not ensure that training provided to employees with

occupational exposure to bloodborne pathogens met the requirements of this section (1910.1030(g)(2)(i).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

SERIOUS – Citation 1, item 3 – Contaminated needles were bent and stored on instrument trays that were transferred to a decontamination area instead of being disposed of at the point of use. Employees were required to reach into instrument trays to pick out used needles for disposal and other reusable sharps for cleaning/disinfection (1910.1030(d)(2)(vii)(A).

Div. Proposal - \$1,500.00

Formula Amt. - \$1,500.00

TOTAL PENALTY - \$3,750.00

TOTAL FORMULA AMT. - \$3,750.00

Mr. Perkins summarized the citations and proposed penalty as listed. He responded to questions from the Commissioners. Mr. Parker questioned how often the Arizona Division of Occupational Safety and Health (ADOSH) inspects dental offices and whether they find these problems often. Mr. Perkins stated that ADOSH does not conduct many inspections at dental offices and usually only if a complaint is filed. Mr. Parker suggested that this would be a good time to contact the regulatory body for dental offices for educational purposes, letting them know what the OSHA requirements are and offering a model bloodborne pathogen program. Mr. Perkins agreed. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,750.00 on motion of Ms. Oster, second of Mr. McCarthy.

#### Discussion & Action of ADOSH Discrimination Complaints

#10-55 Marc Mathews v. TUV Rheinland PTL – Darin Perkins stated he was withdrawing this matter from consideration at this time.

#10-68 Mark Howey v. AK&J Sealants, LLC – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Mr. Howey. In his complaint, Mr. Howey alleged that he was terminated for complaining about not being able to use the restroom, inquiring about exposure to radio frequencies and complaining about fall protection safety. In response to the complaint, the employer stated that Mr. Howey was terminated for not following safety protocol when he removed his fall protection while working 10 stories above the ground level in a suspended scaffold.

Mr. Perkins presented a history of Mr. Howey's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter since there was no evidence of a causal link between the protected activity and adverse action other than timing. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Mr. Parker.

#10-92 Donna Wilkes v. Northland Pioneer College – Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Wilkes. In her complaint, Ms. Wilkes alleged that she unjustly lost half of her teaching duties due to her complaints of chemical exposure in the laboratory room. In response to the complaint, the employer stated that Ms. Wilkes has not been disciplined for her refusal to teach in the lab. She is still teaching a full load of courses, only her overload of lab classes has been reduced, and this, at her own request.

Mr. Perkins presented a history of Ms. Wilkes' employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the matter. Following discussion, the Commissioners unanimously voted not to pursue the complaint on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action regarding A.A.C. R20-5-601 and A.A.C. R20-5-602 Final Rulemaking Amendments to Toxic and Hazardous Substances, Steel Erection and Cranes and Derricks

Darin Perkins advised that ADOSH would like to move forward with amending Rules 601 and 602 to conform the hexavalent chromium, steel erection, and cranes and derricks in construction standards with the federal counterparts and summarized each of the amendments. Following discussion, the Commission unanimously directed ADOSH to file a Notice of Final Rulemaking with the Secretary of State on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action of Request for Renewal of Self Insurance Authority

City of Glendale – Ms. Pastor presented staff's renewal report along with current Moody's, Standard & Poor's and Dunn and Bradstreet bond and credit ratings. The City has requested the Commission approve the use of its fully funded risk management fund as an alternative to posting other security. The City has provided the Commission with a certificate from their Board of Supervisors stating that they have fully-funded risk management fund sufficient to cover its actuarial liabilities. The City has a trust fund and uses a 55% confidence level and discount rate of 1%. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's financial stability; receipt of a clean audit report; good bond ratings and acceptable credit ratings. The Commission unanimously approved renewal of self-insurance authority and approved the use of the fully funded risk management fund as an alternative to posting other security on motion of Mr. Parker, second of Mr. McCarthy contingent on the City maintaining a positive balance in the workers' compensation fund.

City of Peoria – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings. The City meets the qualifications under A.A.C. § R20-5-1114 for maintaining a fully-funded risk management fund as an alternative to the posting of other securities. The City has a trust fund and uses a confidence level of 75% with a discount of 3.5%. They also have \$2 million dedicated to large losses for workers' compensation claims. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the City's good stable condition in economic turbulence, protections afforded it as a governmental entity; and good bond and credit ratings. The Commission unanimously approved renewal of self-insurance authority and the use of the fully funded risk management fund as an alternative to posting other security on motion of Mr. McCarthy, second of Ms. Oster.

Maricopa County – Ms. Pastor presented staff's renewal report along with current Moody's, Fitch, and Dunn and Bradstreet bond and credit ratings and responded to question from the Commissioners. She stated that the County uses a confidence level of 55% and an annual discount rate of 2% as part of its actuarial report. Ms. Pastor advised that Administration is recommending renewal of workers' compensation self-insurance authority based on the County's financial strength; the financial protections afforded it as a governmental entity; the receipt of a clean audit report and acceptable bond and credit ratings. The Commission

unanimously approved renewal of self-insurance authority on motion of Mr. Parker, second of Ms. Oster.

Discussion & Action of Proposed Civil Penalties Against Uninsured Employers.

- 2C10/11-0689 Cary W. McElyea & Virginia McElyea,  
Husband & Wife dba R&R Pizza Express
- 2C10/11-1378 Classic Automotive Repair, L.L.C.
- 2C10/11-1279 TDB Industries, Inc. dba Shade Industries
- 2C10/11-1053 Velvet Gold Mine, LLC dba The Sweet Spot

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 \$1,000.00 are recommended against employers #0689, 1279 and 1053. He is further recommending a penalty of \$500.00 be assessed against employer #1378 as they have recently obtained insurance. Mr. Wade provided information regarding each of the employers and responded to questions from the Commission. Following discussion, the Commission unanimously assessed civil penalties of \$1,000.00 against employers #0689, 1279 and 1053 and a civil penalty of \$500.00 against employer #1378 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action regarding Arizona Physicians' & Pharmaceutical Fee Schedule, including the scheduling of the Public Hearing for the 2011 Fee Schedule

Laura McGrory described the Fee Schedule process and stated that the Commission needs to schedule the public hearing for this year's update. She advised that Fee Schedule - 2011 Staff Recommendations will be available for viewing on the Commission's website tomorrow. She briefly reviewed the Staff Recommendations. The Commission scheduled the Fee Schedule public hearing for Thursday, May 26<sup>th</sup> at 1:00 p.m. in the Commission's First Floor Auditorium.

Ms. McGrory stated that comments have been received, and the comment period is ending soon, regarding the proposed language change to the introduction to the fee schedule regarding networks. She has scheduled a meeting of the Network Work Group to review the comments and determine whether any further recommendations for change are necessary.

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

Ms. McGrory summarized the Senate's proposed budget for fiscal year 2012 including a proposed fund transfer of \$426,700 from the Commission's administrative fund to the state's general fund. She explained that this amount is equivalent to the amount the Commission would save if the Commission were to maintain the existing furlough days. She summarized the financial projections for fiscal years 2011 and 2012 and discussed options to address the projected revenue deficit.

Announcements and Scheduling of Future Meetings

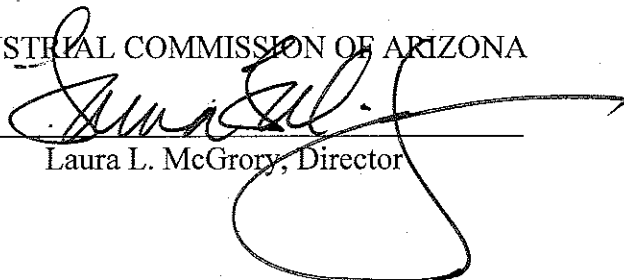
Ms. Hilton reminded the Commissioners that the next meeting is scheduled for

Wednesday, April 6<sup>th</sup> and will begin with a lump sum hearing. Further meetings were scheduled for Thursday, April 21<sup>st</sup> and Wednesday, April 27<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Delfs adjourned the meeting at 2:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

A large, stylized handwritten signature in black ink, appearing to read 'Laura L. McGrory', is written over a horizontal line. The signature is highly cursive and extends significantly to the right of the line.

Laura L. McGrory, Director

ATTEST:

Teresa Hilton  
Teresa Hilton, Commission Secretary