

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, June 2, 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
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Darin Perkins	Director, ADOSH
	Mike Hawthorne	Chief Financial Officer
	Renee Pastor	Self Insurance Manager
	Jeri McAnerny	Tax Accountant
	Kamen Kovatchev	Accounting
	Teresa Hilton	Commission Secretary

Vice Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Jeff Gray of Arizona Self-Insurers Association and Eda Barolli of Snell & Wilmer.

Approval of Minutes of May 26, 2011 Meeting

The Commission unanimously approved the Minutes of May 26, 2011 on motion of Mr. McCarthy, second of Ms. Oster.

Discussion & Action of Proposed OSHA Citations and Penalties

Cool Busters Air Conditioning and Refrigeration, LLC – For Review Only

Darin Perkins advised that this involved a fatality in which an individual was hired to diagnose air conditioning unit problems and came in contact with live electrical parts. The deceased was the only employee in the business. No citations were proposed.

Metric Roofing of Tucson, Inc.
6902 Camino Martin, Ste. 130
Tucson, AZ 85741

Site Location: 2410 E. River Rd., Tucson, AZ 85718
Inspection #: A9339/315442137
Insp. Date: 03/17/11

Planned
Yrs/Business – 18
Empl. Cov. by Insp. – 10

SERIOUS – Citation 1 Item 1 – The forklift was left unattended, without the forklift tines being lowered to the ground as required in the ANSI B56.1-1969, Safety Standards for Powered Industrial Trucks, Section 6, Paragraph 603E (1926.602(c)(1)(vi)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 Item 2 – Three employees were working on the roof of a two story residential structure without any form of fall protection (1926.501(b)(13)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Darin Perkins summarized the citations and proposed penalty as listed and 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.

Steel Side Erection Inc.

3778 E. Gemini Pl.

Chandler, AZ 85249

Planned

Yrs/Business – 5

Empl. Cov. by Insp. – 3

Site Location: 11800 E. Chandler Blvd., Chandler, AZ 85225

Inspection #: Q8339/315553156

Insp. Date: 04/27/11

SERIOUS – Citation 1, item 1 – An employee was climbing over the handrails of the scissor lift to access the roof deck at a height of 27' (1926.453(b)(2)(iv)).

(One inspection in the past three years with no violations).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 1, item 2 – An employee working on an open sided control decking zone did not have fall protection (1926.760(a)(1)).

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

TOTAL PENALTY - \$4,000.00

TOTAL FORMULA AMT. - \$4,000.00

Mr. Perkins summarized the citations and proposed penalty as listed. In response to a question from Mr. McCarthy regarding an adjustment for history, Mr. Perkins reviewed the investigation file and stated that both citations were eligible for a 10% adjustment. Mr. Perkins stated that he would amend the Division recommendation to \$1,500.00 for each citation for a total penalty of \$3,000.00. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Parker, second of Mr. McCarthy.

Qwest Communication Corporation dba

Qwest Communications Company, LLC

20 E. Thomas Rd.

Phoenix, AZ 85018

Unprogram Related

Yrs/Business – 2

Empl. Cov. by Insp. – 2

Site Location: 11098 N. Scottsdale Rd., Scottsdale, AZ 85254

Inspection #: I7163/315442319

Insp. Date: 03/17/11

SERIOUS – Citation 1 Item 1 – The competent person at the jobsite did not conduct adequate daily inspections of the excavation and adjacent areas throughout the course of the work to identify evidence of a situation that could result in a possible cave in or other hazards

(1926.651(k)(1).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1, item 2 – Two employees were working in an excavation 13’ deep, 17’ wide and 29’ long which was lacking an adequate protective system installed to prevent a collapse (1926.652(a)(1).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$4,500.00

TOTAL FORMULA AMT. - \$4,500.00

Darin Perkins advised that this case file and the next were on the same job site. He summarized the citations and proposed penalty as listed and 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 Mr. McCarthy, second of Ms. Strickler.

Telcom Construction, Inc.

4040 E. Magnolia St.

Phoenix, AZ 85034

Complaint

Yrs/Business – 2

Empl. Cov. by Insp. – 4

Site Location: 11098 N. Scottsdale Rd., Scottsdale, AZ 85254

Inspection #: I7163/315442012

Insp. Date: 03/17/11

SERIOUS – Citation 1, item 1 – Two employees were not instructed in the recognition and avoidance of hazards associated with trenching and excavation work (1926.21(b)(2).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1, item 2 – The competent person at the jobsite did not conduct adequate daily inspections of the excavation and adjacent areas throughout the course of the work to identify evidence of a situation that could result in a possible cave in or other hazards (1926.651(k)(1).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1, item 3 – Two employees were working in an excavation 13’ deep, 17’ wide and 29’ long which was lacking an adequate protective system installed to prevent a collapse (1926.652(a)(1).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

TOTAL PENALTY - \$6,750.00

TOTAL FORMULA AMT. - \$6,750.00

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 \$6,750.00 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion and/or Action regarding United Food & Commercial Workers Local 99, et. al, v. Jan Brewer, in her capacity as Governor of the State of Arizona, et al., U.S. District Court case number 2:11-cv-921-PHX-SRB. 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. McCarthy recused himself from consideration of this agenda item and left the meeting room. The Commission unanimously voted to move into Executive Session on motion of Ms. Oster, second of Ms. Strickler. Executive Session Minutes are kept separately.

Upon return to General Session, the Commission directed legal counsel to proceed with option number one on motion of Ms. Oster, second of Ms. Strickler. Mr. McCarthy had rejoined the meeting but did not participate in the vote.

Discussion & Action regarding HB 2584, and Establishment of Directed Care Evaluation Committee

Ms. Strickler recused herself from consideration of this agenda item. Ms. McGrory advised that this is a continuation of the discussion from last week concerning House Bill 2584. She summarized the bill and stated that the Commission made a commitment to its stakeholders to establish an evaluation committee to provide recommendations to the Commission regarding protocol and assessment of the directed care pilot program. She provided updated information in response to questions raised last week by Commissioner Parker and stated that Ms. Garland is now processing workers' compensation claims of fire and police employees of a public self-insured entity. Ms. McGrory stated that she would recommend the same candidates she suggested last week, plus herself and a member of the Commission. Mr. Parker stated that would take care of his concern since a person familiar with the processing of public safety claims would be sitting on the evaluation committee. Following further discussion, the Commission established the evaluation committee and defined the responsibilities to include the identification of criteria to determine whether the purpose of the pilot program has been fulfilled and to include within the recommendations made to the Commission, the requirement for a final report as well as any other interim reports that the evaluation committee may decide are appropriate. The Commission also directed the committee to meet with parties who are interested in participating in the pilot program and also meet with the county pool. The members appointed are Chris Garland and Beth Rau (representing the self-insured employer community), Chic Older and Dr. Robert Orford (representing the medical community), in addition to Ms. McGrory and Commissioner Oster on motion of Mr. Parker, second of Mr. McCarthy.

Discussion & Action regarding 2011-2012 Physicians' and Pharmaceutical Fee Schedule pursuant to A.R.S. §23-908(B)

Ms. McGrory advised that this is a standing agenda item and she will be bringing issues to the Commission as they are evaluated and recommendations are made. Ms. Oster advised that IAIABC has announced the continuation of the AWP publication. Ms. McGrory explained that this issue was identified in the staff study as one not requiring action at time because publication of AWP will continue. She summarized the discussion of this issue by the Pharmacy Task Force

Discussion &/or Action regarding Legislation

Ms. McGrory stated that Scot Butler would be giving the Commissioners a full update at an upcoming meeting.

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

Ms. McGrory advised that there is nothing new to discuss.

Announcements and Scheduling of Future Meetings

Ms. Hilton reminded the Commissioners that meetings are scheduled for Thursday, June 16th and Wednesday, June 22nd. Ms. McGrory recommended that the Commission set a date for the annual assessment hearing under A.R.S. 23-1065 towards the end of July or later. The Commission scheduled further meetings for July 7th, 13th and 28th and agreed to have the assessment hearing on the 28th.

There being no further business to come before the Commission and no public comment, Vice Chairman Parker adjourned the meeting at 1:50 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary