

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Wednesday, May 8, 2013 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	John A. McCarthy, Jr.	Member
	Susan Strickler	Member
	Michael G. Sanders	Member (telephonic)
	Laura McGrory	Director
	Andrew Wade	Chief Legal Counsel
	Kathryn Harris	Legal Counsel
	Larry Gast	Acting Director, ADOSH
	Bryce Rucker	Safety Compliance Officer
	Michael Hawthorne	Chief Financial Officer
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Oster was not able to attend. Also in attendance were Scot Butler, the agency's lobbyist; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of May 1, 2013 Meeting

Secretary Hilton noted that Chairman Parker had requested a change to the draft minutes on page five, sentence two to read, "The District has an internal service fund and trust fund for workers' compensation that is funded at the expected level (55% confidence level). The District is posting security at 125% of their outstanding claim reserves for medical and compensation." The Commission approved the Minutes of the May 1, 2013 meeting with the change on motion of Ms. Strickler, second of Mr. McCarthy. Mr. Sanders abstained.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers
1. 2C12/13-1027 D.M. Foods, Inc. dba
Rosati's Authentic Chicago Pizza
 2. 2C12/13-0221 National Tax Network, L.L.C. dba
Jackson Accounting

Chairman Parker asked whether any items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the consent agenda on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action regarding Legislation

Scot Butler provided a brief updated report of current legislative activity for HB 2485, HB 2303, SB 1310 and SB 1087.

Discussion & Action regarding ADOSH Discrimination Complaint

#12-57 Ann Marie Miller vs. Colmed Collection Services, LLC – Larry Gast presented a summary of the employee’s complaint, the employer’s response, and the Division’s investigation of the matter and responded to questions from the Commission. Mr. Gast recommended that the Commission pursue the matter because the investigation found sufficient evidence to support a causal link between the exercise of protected activity and the adverse action. Following discussion, the Commission unanimously voted to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler.

#13-3633-03 Lindsey Emerson vs. Crystal Reflections Int., Inc. - Chairman Parker stated that consideration of this agenda item would be tabled.

#13-2603-03 German Cortez vs. Interstate Mechanical Corporation - Larry Gast presented a summary of the employee’s complaint, the employer’s response, and the Division’s investigation of the matter. Mr. Gast recommended that the Commission decline to pursue the matter because the investigation did not find sufficient evidence to support a causal link between the exercise of any protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Fayette A/C & Sheetmetal, Inc. 1971 Industrial Blvd. Lake Havasu City, AZ 86403 <hr/> Site Location: 1616 Willow Ave., Lake Havasu City, AZ 86403 Inspection #: F3189/316956069 Insp. Date: 02/07/2013	Fatality/Accident Yrs/Business – 15 Empl. Cov. by Insp. – 3
---	---

SERIOUS – Citation 1 - Item 1(a) – Two employees were working at heights above 6 feet and a fall protection plan had not been prepared and implemented which reduced or eliminated fall hazards for employees engaged in residential construction. (A.R.S. § 23-492.07(A)).

Div. Proposal - \$750.00	Formula Amt. - \$750.00
--------------------------	-------------------------

GROUPED SERIOUS – Citation 1 - Item 2(a) – The employer did not prepare and retain documentation for monthly inspections conducted on a 1986 International 1954 Series 1 truck with a Manitex crane, model 1261, serial number 15394, which had been inspected in accordance with 29 CFR 1926.1412, paragraph (d), (pre-shift). (1926.1412(e)(3)).

Citation 1 - Item 2(b) – Annual disassembly and inspections were not conducted by a qualified person for a 1986 International 1954 Series 1 truck with a Manitex crane, model 1261, serial number 15394, in accordance with the requirements of 29 CFR 1926.1412(f)(1) through (f)(2)(xxi). (1926.1412(f)).

Div. Proposal - \$ 750.00	Formula Amt. - \$ 750.00
---------------------------	--------------------------

TOTAL PENALTY - \$1,500.00	TOTAL FORMULA AMT. - \$1,500.00
----------------------------	---------------------------------

Mr. Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Commission unanimously approved issuing the

citations and assessed the recommended penalty of \$1,500.00 on motion of Mr. McCarthy, second of Mr. Sanders.

Block Partners LLC dba Master Block
12620 W. Butler Dr.
El Mirage, AZ 85335

Complaint
Yrs/Business – 2
Empl. Cov. by Insp. – 20

Site Location: 12620 W. Butler Dr., El Mirage, AZ 85335
Inspection #: Q6169-316914647
Insp. Date: 01/24/2013

SERIOUS – Citation 1 - Item 1 – Plant 2, Mixer Platform: The top of the south concrete hopper was partially uncovered during normal operations thereby exposing employees to a 7’ 8” fall into the hopper. (1910.22(c)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Plant 1: One employee was exposed to a fall hazard of approximately 5’ 2” while working on top of a Columbia Machine Inc. Block Machine (model and serial number unknown). (1910.23(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 3(a) - Yard: One employee operated a Linde forklift, model H30D serial number H2X393S00785, while not wearing the seatbelt provided. (1910.132(a)).

Citation 1 – Item 3(b) - Plant 1: One employee operated a Linde forklift, model H30D serial number unknown, while not wearing the provided seatbelt. (1910.132(a)).

Citation 1 – Item 3(c) - Plant 1: One employee operated a yellow, LP forklift, model and serial number unknown, while not wearing the provided seatbelt. (1910.132(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 4(a) – The employer did not inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and danger posed by the permit spaces. (1910.146(c)(2)). There were four other instances of this violation.

Citation 1 - Item 4(b) – When an entrance cover was removed, the opening was not promptly guarded by a railing, temporary cover, or other temporary barrier that would prevent an accidental fall through the opening and that would protect each employee working in the space from foreign objects entering the space. (1910.146(c)(5)(ii)(B)). There was one instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 5(a) – Nameplates or markings for powered industrial trucks were not in place. (1910.178(a)(6)). There was one instance of this violation.

Citation 1 - Item 5(b) – Powered industrial truck(s) with defect(s) or in any way unsafe had not been withdrawn from service until restored to safe operating condition(s). (1910.178(p)(1)). There were three instances of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 6(a) – Operators were not provided refresher training when assigned to drive a different type of powered truck. (1910.178(l)(4)(ii)(D)). There was one instance of this violation.

Citation 1 - Item 6(b) – Where previous training appropriate to the truck and working conditions had been provided, the operator was not evaluated and found competent to operate the truck safely. (1910.178(l)(5)). There was one instance of this violation.

Citation 1 - Item 6(c) – Powered industrial trucks were left unattended without the power shut off. (1910.178(m)(5)(i)). There was one instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 7(a) – Plant 2: The rated load of a cantilever crane was not plainly marked on each side of the crane. (1910.179(b)(5)).

Citation 1 - Item 7(b) – Plant 2: The hook on the CM Lodestar, 2-Ton Electric Hoist, Model and Serial number unknown, did not meet the manufacturer's recommendations, as it was missing a safety latch. (1910.179(h)(4)).

Citation 1 - Item 7(c) – Plant 2: Frequent inspections were not performed of all functional operating mechanisms and components of the crane and the CM Lodestar, 2-Ton Electric Hoist, Model and Serial number unknown. (1910.179(j)(2)).

Citation 1 - Item 7(d) – Plant 2: Complete periodic inspections were not conducted of the crane and the CM Lodestar, 2-Ton Electric Hoist, Model and Serial number unknown. (1910.179(j)(3)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS – Citation 1 - Item 8(a) – Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by pinch points. (1910.212(a)(1)). There were six instances of this violation.

Citation 1 - Item 8(b) – Point(s) of operation of machinery were not guarded to prevent employee(s) from having any part of their body in the danger zone(s) during operating cycle(s). (1910.212(a)(3)(ii)). There were two instances of this violation.

Citation 1 - Item 8(c) – Sprocket wheels and chains which were seven feet or less above floors or platforms were not enclosed. (1910.219(f)(3)). There was one instance of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$6,000.00

TOTAL FORMULA AMT. - \$6,000.00

Mr. Gast summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Chairman Parker regarding proof of abatement, Mr. Gast stated that he would recommend ADOSH consultation services to the employer and has also referred the file to the Industrial Hygiene section who will assist with resources to safety organizations or training. The Commission unanimously approved issuing

the citations and assessed the recommended penalty of \$6,000.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action regarding Hourly Rate Used in Considering Applications to Set Attorneys' Fees under A.R.S. § 23-1069

Mr. Wade stated that the Commission has considered an hourly rate of \$125 for an attorney that is certified by the State Bar of Arizona as a specialist in workers' compensation law and \$110 per hour for an attorney that is not a certified specialist to be reasonable hourly rates used in the process of considering what is a reasonable attorneys' fee in addressing applications for attorneys' fees under A.R.S. § 23-1069. He noted that these rates have been in place for at least 15 years and the fees charged by attorneys have increased over the years and staff is recommending that the Commission adopt the amount of \$200 per hour as a reasonable hourly rate for those attorneys who are certified specialists in workers' compensation law and an amount of \$185 per hour for those attorneys who are not certified specialists. Mr. Wade explained how the rates are used in determining a reasonable fee and why staff recommends these rates. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously approved the amount of \$185 per hour for attorneys certified as specialists in workers' compensation law and \$160 per hour for an attorney that is not a certified specialist as reasonable hourly rates for the limited purpose of assisting the Commission in analyzing attorney fee petitions on motion of Ms. Strickler, second of Mr. McCarthy.

Discussion & Action of Attorney Fee Petition.

Richard E. Taylor v. Thomas W. McDonough – Mr. Wade advised that Kathryn Harris is here to answer any questions the Commission may have. He stated that this attorney fee petition was previously presented to the Commission at which time the Commission directed staff to obtain additional information. Mr. Wade stated that Mr. Taylor provided additional information concerning the work he had performed on this case, the total amount of attorneys' fees received to date, and an explanation concerning the actions taken in regard to "hotly debated" issues. Staff is recommending that the Commission award attorney's fees in the amount of \$19,157.19. Mr. Wade noted the fee statute allows the Commission to set a fee for a maximum of 25% of the award for a maximum of ten years. Mr. Wade responded to questions from the Commissioners. Following discussion, the Commission unanimously awarded attorneys' fees in the amount of \$19,157.19 on motion of Mr. McCarthy, second of Ms. Strickler.

Discussion &/or Action on Rulemaking Regarding Selection of Index Used in Adopting Maximum Average Monthly Wage under A.R.S. §23-1041(E)

Mr. Wade provided an update on the rulemaking process and stated that oral proceeding was held on March 19, 2013. Comments were received in support of the rulemaking and no comments were received in opposition. Staff is recommending the following language for new rule 165, "In using the Bureau of Labor Statistics Employment Cost Index to adopt the amount of an increase to the maximum average monthly wage under A.R.S. §23-1041(E), the Commission shall use the Bureau of Labor Statistics, Employment Cost Index for Wages and Salaries, for Civilian Workers, by Occupational Group and Industry, All Workers." Chairman Parker agreed with staff's proposal and stated that the Commission should review the use of this index in three years. Following further discussion, the Commission unanimously approved the language and directed staff to file the Notice of Final Rulemaking and authorized staff to make

only nonsubstantive changes that may be needed during the review process on motion of Ms. Strickler, second of Mr. McCarthy.

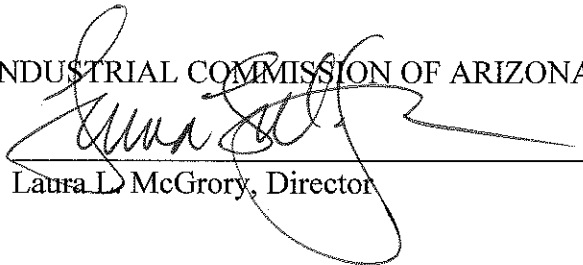
Announcements and Scheduling of Future Meetings

Secretary Hilton reminded the Commissioners that the next meeting of the Commission is scheduled for Thursday, May 23, 2013.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:25 p.m.

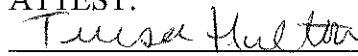
THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura L. McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary