

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street
Conference Room 308
Phoenix, Arizona 85007
Thursday, August 15, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Renee Pastor	Self Insurance Manager
	William Warren	Director, ADOSH
	Ron Harnsberger	Safety Compliance Officer
	Angela McCray	Human Resources Manager
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:01 p.m. noting a quorum present. Also in attendance were Matt Saxe of Lange, Baker & Klain; Jeff Homer of General Dynamics; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of August 9, 2013 Meeting

The Commission approved the Minutes of August 9, 2013 on motion of Ms. Oster, second of Mr. Hennelly with a vote of four in favor of the motion. Ms. Strickler did not participate in the vote.

Consent Agenda:

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C12/13-0568 A & M Investigations, LLC dba Chief Building Services
2. 2C12/13-1398 Anne N. Duncan, a Single Woman,
dba Annie's Cupboard
3. 2C11/12-1333 Magic Powerboats, LLC
4. 2C11/12-2767 Yariv Homes, L.L.C.

b. Approval of Applications for Renewal of Self-Insurance Authority.

1. Banner Health
2. HealthSouth Corporation
3. International Paper Company
4. John C. Lincoln Health Network
5. Marriott International, Inc.
6. Pinnacle West Capital Corporation

7. The Wendy's Company
8. Valley Schools Workers' Compensation Pool

Chairman Parker asked if any items needed to be removed from the Consent Agenda. Hearing none, the Commission unanimously approved the Consent Agenda items on motion of Ms. Strickler, second of Ms. Oster.

Discussion & Action of ADOSH Discrimination Complaints.

#13-3875-02 Miguel Angel Martinez vs. Wal-Mart Stores, Inc. – Bill Warren stated that this and the following discrimination complaint involved the same activity and the same employer. He presented a summary of the employees' complaints, the employer's response, and the Division's investigation of the matter and responded to questions from the Commissioners. Mr. Warren 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. The two files were discussed together, with votes taken separately on each case. Mr. Sanders asked if it was violation of a safety standard where the supervisor observed a violation but did not stop the employees. Ms. McGrory explained that ADOSH did cite the employer for this violation and it is up to Wal-Mart whether to reprimand the supervisor. Chairman Parker stated that he would like to follow-up on Mr. Sanders' question with a future discussion on this topic in regards to discrimination investigations. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Oster.

#13-3875-03 Luis Nava vs. Wal-Mart Stores, Inc. – Bill Warren stated that this and the previous discrimination complaint involved the same activity and the same employer. Mr. Warren 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. The Commission unanimously voted not to pursue the complaint on motion of Mr. Sanders, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Evans Machinery, Inc.
5530 N. 51st Ave.
Glendale, AZ 85031

Fatality/Accident
Yrs/Business – 45
Empl. Cov. by Insp. – 11

Site Location: 5530 N. 51st Ave., Glendale, AZ 85031
Inspection #: N4762-317112-04
Insp. Date: 04/25/2013

SERIOUS – Citation 1 –

Item 1(a) – West Roof Area of Main Building: An employee was not provided adequate protection, by a standard railing of 42 inches in height, from a 17 foot fall when the employee fell to the ground during the lowering of damaged metal water pipes while on the roof next to the approximately 36 inch tall parapet. (1910.23(c)(1)).

Item 1(b) – West Roof Area of Main Building: The employer did not provide personal fall protection equipment for an employee to wear while working on the roof next to the 36 inch tall

parapet, which had a 17 foot fall hazard, that did not meet the 42 inch minimum height requirement of a standard railing as identified in 29 CFR 1910.23(e)(1) and 1910.23(e)(3)(v)(a). (1910.132(a)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – West Roof Area of Main Building: The employer did not assess the roof area to verify the selection and use of the required personal protective equipment where an employee would be working next to a 36 inch tall parapet, which had a 17 foot fall hazard, as the parapet did not meet the 42 inch minimum height requirement of a standard railing as identified in 29 CFR 1910.23(e)(1) and 1910.23(e)(3)(v)(a). (1910.132(d)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – West Roof Area of Main Building: The employer did not provide training to an employee regarding when to use personal protective equipment (PPE) and in the selection, use, care, maintenance, working life and disposal of PPE (i.e., personal fall protection equipment), as the employee had been working without personal fall protection equipment when he fell while next to a 36 inch tall parapet that did not meet the 42 inch minimum height requirement of a standard railing as identified in 29 CFR 1910.23(e)(1) and 1910.23(e)(3)(v)(a), which had a 17 foot fall hazard. (1910.132(f)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 – West Roof Area of Main Building: An employee, who was not a qualified person, was not trained in and familiar with the electrical safety-related work practices that were necessary for his safety regarding his respective job assignment, as the employee handled a metal water pipe in a manner which caused the metal water pipe to come into contact with a single phase (a conductor which is rated at 7,200 volts to ground) of an energized overhead 12.4 kV power line circuit, while the employee was not wearing electrically-rated rubber insulating gloves. (1910.332(b)(2)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 -

Item 5 (a) – West Roof Area of Main Building: An employee, who was not a qualified person, did not use electrical safety-related work practices that were necessary for his safety regarding his respective job assignment, as the employee handled a metal water pipe in a manner which caused the metal water pipe to come into contact with a single phase (a conductor which is rated at 7,200 volts to ground) of an energized overhead 12.4 kV power line circuit, while the employee was not wearing electrically-rated rubber insulating gloves. (1910.333(a)).

Item 5 (b) – West Roof Area of Main Building: An employee, who was not a qualified person, was working in an elevated position near an unguarded, energized overhead 3-phase, 12.4 kV power line circuit, while handling a metal water pipe in a manner which caused the metal water pipe to come within 10 feet and then make contact with a single phase (a conductor which is rated at 7,200 volts to ground) of the unguarded, energized overhead 12.4 kV power line circuit. (1910.333(c)(3)(i)(A)(1)).

Item 5 (c) – West Roof Area of Main Building: An employee handled a 27 foot long metal water pipe with his bare hands in a manner which caused the metal water pipe to come into

contact with a single phase (a conductor which is rated at 7,200 volts to ground) of the unguarded, energized overhead 3-phase, 12.4 kV power line circuit. (1910.333(c)(6)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 6 – West Roof Area of Main Building: An employee was not provided electrically-rated rubber insulating gloves when he handled a 27 foot long metal water pipe with his bare hands in a manner which caused the metal water pipe to come into contact with a single phase (a conductor which is rated at 7,200 volts to ground) of the unguarded, energized overhead 3-phase, 12.4 kV power line circuit. (1910.335(a)(1)(i)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS – Citation 1 - Item 7 – West Roof Area of Main Building: The employer had not installed safety signs on the roof side of the west parapet stating “DANGER – HIGH VOLTAGE ABOVE” to indicate that the energized overhead 12.4 kV power lines were within range for potential contact by employees handling long conductive objects. (1910.335(b)(1)).

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$24,000.00

TOTAL FORMULA AMT. - \$24,000.00

Bill Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for Citation 1, Items 4, 5, and 6, was for the gravity based penalty with no adjustment factors since the violations directly related to the fatality. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$24,000.00 on motion of Ms. Strickler, second of Ms. Oster.

Tucson Residence Foundation, Inc.
115 S. Sherwood Village Drive
Tucson, AZ 85710

Complaint
Yrs/Business – 42
Empl. Cov. by Insp. – 10

Site Location: 115 S. Sherwood Village Drive, Tucson, AZ 85710

Inspection #: T3633-317038404

Insp. Date: 04/02/2013

SERIOUS – Citation 1 - Item 1 – An employee was injured by a consumer on January 22, 2013, and the same employee was injured by the same consumer on March 13, 2013. The company did not have a written violence prevention program relating to the hazard of employee injury from consumers, and did not ensure that other feasible action was taken to protect employees working with a consumer who had escalating violent behaviors. (A.R.S. § 23-403(a)).

Div. Proposal - \$4,500.00

Formula Amt. - \$4,500.00

Bill Warren summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, consideration of this proposed citation was held pending receipt of additional information including whether employees were properly trained in dealing with violent patients, what steps the employer has in place when an incident occurs or an employee complains, and how the employer’s safety program addresses the issues.

Green Rhino Builders, LLC
1425 E. University Drive
Tempe, AZ 85281

Complaint
Yrs/Business – 1
Empl. Cov. by Insp. – 3

Site Location: 1897 E. Carmon St., Tempe, AZ 85283
Inspection #: R1538-317165272
Insp. Date: 06/14/2013

REPEAT SERIOUS – Citation 1 - Item 1 – Employees exposed to fall hazards of six feet or more were not trained in recognition of fall hazards. (A.R.S. § 23-492.09).

Green Rhino Builders, LLC was previously cited for a violation of this Occupational Safety and Health Standard or its equivalent 1926.503(a)(1), which was contained in ADOSH Inspection Number 316892694, Citation 1 Item 2, Issued on 2/07/13 with respect to a workplace located at 209 East Baseline Road, Tempe, AZ 85283.

Div. Proposal - \$2,000.00

Formula Amt. - \$2,000.00

SERIOUS – Citation 2 - Item 1 – A written fall protection plan which reduces or eliminates fall hazards for employees engaged in residential construction activities six feet or more above lower levels did not contain the required elements as outlined in subparagraphs A.1, 2 and 3. (A.R.S. § 23-492.07(A)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Bill Warren advised that this file was previously presented to the Commission at which time there were additional questions. He advised that upon review, this was clearly identified as construction related and was cited under the residential fall protection standard and that the employees were not trained. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Mr. Sanders, second of Ms. Oster.

Discussion &/or Action regarding the Selection and Interview Process for Chief Administrative Law Judge. The Commission may move into Executive Session under A.R.S. §38-431.03(A)(1), (A)(2), and (A)(3) to Select Candidates to Interview and to Discuss Interview Questions

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

Upon return to General Session, the Commission unanimously selected candidates 1, 2, 3 and 4 for interviews on motion of Mr. Sanders, second of Ms. Oster. Chairman Parker requested that the Commissioners review the interview questions and provide Director McGrory with their suggestions. It was agreed that interviews would be scheduled for August 21, 2013 beginning at 1:00 p.m. The Commissioners also requested that the candidates supply a recent writing sample which demonstrates their legal and analytical abilities and at least three professional references.

Announcements and Scheduling of Future Meetings

Ms. McGrory advised that Federal OSHA will be posting the FAME report for ADOSH and other state plans on their website. She stated she would e-mail the Commissioners a copy of the FAME report along with ADOSH's response and this can be a future agenda item for discussion if they wish.

The Commissioners agreed that the meeting on Wednesday, August 21st would begin at 12:30 p.m.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 2:45 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:



Teresa Hilton, Commission Secretary