

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Conference Room 308

Phoenix, Arizona 85007

Wednesday, September 4, 2013 – 1:00 p.m.

Present:	David M. Parker	Chairman
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member
	Michael G. Sanders	Member (telephonic)
	Joseph M. Hennelly, Jr.	Member
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	Valli Goss	Legal Counsel
	William Warren	Director, ADOSH
	Larry Gast	Asst. Director, ADOSH
	Bryce Rucker	Compliance Officer
	Chris Brandon	Compliance Officer
	Bob Breakiron	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. Also in attendance were Matt Saxe of Lang, Baker & Klain, PLC; Stephanie Coulter of Cavanaugh Law firm; and Andrea Lewis of Snell and Wilmer.

Approval of Minutes of August 21, 2013 Meeting

The Commission unanimously approved the Minutes of the August 21, 2013 General Session on motion of Mr. Hennelly, second of Ms. Oster.

The Commission unanimously approved the Minutes of the August 21, 2013 Executive Session on motion of Ms. Oster, second of Mr. Hennelly.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. 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.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

1. 2C13/14-0023 Della, Inc. dba Premier Children's Center
2. 2C12/13-1484 Double E Roofing, LLC

SERIOUS – Citation 1 –

Item 2(a) – Insulating links were not utilized during the lifting and placing of structural steel near energized 12KV power lines. (1926.1410(d)(4)(i)).

Item 2(b) – Lifting slings used adjacent to 12KV power lines were not fabricated of a non-conductive material. (1926.1410(d)(5)).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS – Citation 1 – Item 3 – Crane operator did not verify approach clearance prior to making the lift and exercise his authority to stop the lift, therefore exposing himself and others to electrical shock. (1926.1418).

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

TOTAL PENALTY - \$7,500.00

TOTAL FORMULA AMT. - \$7,500.00

Bill Warren advised that this case file had been presented to the Commissioners previously at which time the Commission requested additional information. Bob Breakiron commented on the employer's employee discipline policy. Mr. Warren and Mr. Breakiron 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 \$7,500.00 on motion of Ms. Oster, second of Mr. Hennelly.

Town of Clarkdale, Town Yard/Shop
P.O. Box 308
Clarkdale, AZ 86324-0308

Programmed Planned
Yrs/Business – 56
Empl. Cov. by Insp. – 7

Site Location: 891 First South St., Clarkdale, AZ 86324
Inspection #: U5916-317075588
Insp. Date: 04/02/2013

SERIOUS – Citation 1 - Item 1 – Shop Area: Employee had not been provided training on how to safely use the vehicle lift (make, model and serial number unknown) prior to the employee using the vehicle lift as specified by the equipment owner's manual as referenced by industry consensus standard, ANSI/ALI ALOIM: 2008 (American National Standards Institute/Automotive Lift Institute, Standard for Automotive Lifts – Safety Requirements for Operation, Inspection and Maintenance). (A.R.S. § 23-403(A)). There was one other instance of this violation.

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 – Item 2 – Mezzanine over office area: The door opening, approximately 8' 2 1/4" above the floor was not guarded by standard railings or equivalent on all open sides, in that it had a top rail but did not have a mid-rail or toe boards. (1910.23(c)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 – Item 3 – Town Yard/Shop: The employer did not establish an energy control program at the Shop that included equipment-specific energy control procedures, including but not limited to earth-moving equipment, and periodic inspections. (1910.147(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1 –

Item 4(a) – Shop Area: One Ace brand bench grinder, model 6” Dual Light Grinder, serial number unknown, did not have safety guards installed to cover the spindle ends, nuts, flange projections on its left wheel. (1910.212(a)(1)).

Item 4(b) – Shop Area: One Ace brand bench grinder, model 6” Dual Light Grinder, serial number unknown, was not equipped with a work rest to support off-hand grinding work on the right wheel. (1910.215(a)(4)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1 – Item 5 – Shop Area: The compressed air distribution system at the entire site was comprised of polyvinyl chloride pipe. (A.A.C. R20-5-628).

Div. Proposal - \$ 300.00

Formula Amt. - \$ 300.00

TOTAL PENALTY - \$4,800.00

TOTAL FORMULA AMT. - \$4,800.00

Bill Warren and Patrick Ireland summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Chairman Parker stated that he was not comfortable with the language in Citation 1 – Item 1 regarding the consensus standard and asked that it be reworded. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$4,800.00 on motion of Ms. Oster, second of Ms. Strickler.

Discussion and Action regarding Residential Fall Protection and Complaint About State Program Administration (CASPA) 2012-AZ27

Ms. McGrory provided a chronology of events related to the residential fall protection issues. She then briefed the Commissioners on the August 27, 2013 meeting that she and Bill Warren had with Federal OSHA representatives.

Ms. McGrory stated that Federal OSHA representatives advised that they would be denying approval of the State Plan change that was submitted last May, which reflected the rule adopted by ADOSH that incorporated by reference A.R.S. Title 23, Article 13 (SB1441). Federal OSHA representatives also stated that they intend to take action against the State Plan authority, changing Arizona from an 18(e) state (full state plan authority where Federal OSHA has no enforcement authority) to an 18(b) state (limited state plan authority in which Federal OSHA has concurrent authority). These actions would be tied to the determination that the ADOSH program is not at least as effective as the Federal program because ADOSH is enforcing SB1441 instead of the Federal fall protection standard. Federal OSHA representatives also stated these actions would result in Federal OSHA assuming jurisdiction over the enforcement of all construction standards, not just residential fall protection standards. They further stated that the assumption of this jurisdiction would result in the loss of federal grant moneys to the ADOSH program. Ms. McGrory described the processes associated with the foregoing actions as those processes were described by the Federal OSHA representatives. She described the position, as stated by Federal OSHA representatives, that once these actions and processes start, there is no going back.

Ms. McGrory stated that she requested Federal OSHA memorialize their intended action and position in writing and she described their response to that request. Ms. McGrory stated that

Federal OSHA noted that there are six other states that have one or more state-specific standards and that Federal OSHA is addressing these differences with those states. Chairman Parker noted that some of the states adopted their standards, with different trigger heights, at a time that Federal OSHA was not enforcing the fall protection requirements. Ms. McGrory stated that, as a result of the information communicated from Federal OSHA, there are numerous legal issues that need to be considered and discussed, including potential litigation.

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

Upon return to General Session, Ms. McGrory stated that the Legal Division would conduct more research before recommendations are made to the Commission. Mr. Butler will schedule meetings with the appropriate people to update them on the latest developments and any information received from Federal OSHA will also be made available.

Discussion & Action regarding Consideration of Assessments under A.R.S. §§23-961(J), 23-966(D), 23-1065(A), and 23-1065(F) for Calendar Year 2014

Michael Hawthorne advised that the Commission has statutory authority to levy four assessments and he described the assessments and the purposes for each assessment. He provided the Commissioners with an updated cash flow analysis. He explained that the Commission may assess a maximum of 3.0% premium tax for the administrative fund and that the Commission established the rate of 2.75% for calendar year 2013. He provided projections for calendar years 2013 and 2014 taxable premiums. He presented an analysis of different options and he stated that staff was recommending that the Administrative Fund premium tax be reduced to 1.75% for calendar year 2014, and he provided an explanation for the recommendation.

Mr. Hawthorne then described the financial condition of the Special Fund and stated that the Fund continues to be actuarially unsound with an actuarial deficit (net asset deficit) at a confidence level of 80% estimated to be \$11.4 million on June 30, 2013. In view of the ongoing net asset deficit position of the Special Fund, annual expenditures that exceed projected assessments, uncertain investment returns, and apportionment liabilities that exceed six million dollars, he recommended that the Special Fund assessment rate be reduced to 1.75% for CY 2014, allocated as follows: § 23-966(D) rate at 0.5%, § 23-1065(A) at 0.75%, and 23-1065(F) at 0.5

Following discussion, the Commission unanimously set the Administrative Fund tax at 1.75% for calendar year 2014 on motion of Ms. Oster, second of Ms. Strickler.

The Commission then discussed the Special Fund assessment rate. Chairman Parker provided charts with confidence level and curve fitting statistics and recommended that the assessment percentages be assigned using a different allocation that focuses solely on funding of projected ultimate losses for the next fiscal year. He recommended that under § 23-1065(F) the rate be set at 0.25%, that the § 23-966(D) rate be set at 0.36% and that the §23-1065(A) rate be set at 1.14% for a total of 1.75%. The Commission then discussed whether the assessment rates should be increased from that recommended rate to address the continuing actuarial deficit of the Special Fund. Following further discussion, the Commission unanimously set the § 23-1065(F) assessment at 0.25% for calendar year 2014 on motion of Mr. Parker, second of Mr. Hennelly. The Commission unanimously set the Special Fund § 23-966(D) assessment at 0.36% on motion

of Mr. Parker, second of Mr. Hennelly. And the Commission unanimously set the § 23-1065(A) assessment at 1.14% for calendar year 2014 on motion of Mr. Parker, second of Ms. Oster.

Ms. McGrory advised that this information will be posted on the agency's web site.

Announcements and Scheduling of Future Meetings

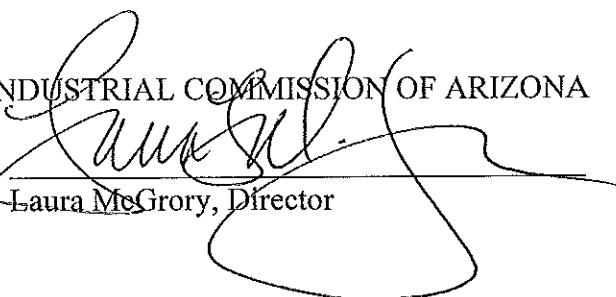
Secretary Hilton reminded the Commissioners that the next meeting is scheduled for Wednesday, September 11, 2013. The Commissioners agreed to move the meeting scheduled for October 16, 2013 to October 17, 2013.

Ms. McGrory reminded the Commissioners that anyone wishing to attend the NCCI State Advisory Forum on October 17th should let Secretary Hilton know and she will register them.

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 3:42 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Laura McGrory, Director

ATTEST:

Teresa Hilton
Teresa Hilton, Commission Secretary