

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, March 19, 2015 – 1:00 p.m.

Present:	David M. Parker	Chairman (video)
	Susan Strickler	Vice Chair (audio)
	Michael G. Sanders	Commissioner
	Joseph M. Hennelly, Jr.	Commissioner (video)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Accounting
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the Commission's lobbyist, and Jason Weber of Snell & Wilmer.

Approval of Minutes of February 26, 2015 and March 3, and 4, 2015 Regular Meetings and February 26, 2015 and March 3, 2015 for agenda items 2 and 3, and March 4, 2015 for agenda items 2 and 3 Executive Sessions.

Chairman Parker stated there is a correction for the February 26, 2015 draft minutes, on page 3, second full paragraph, replace "without a reason" with "without having confirmed a timely complaint." The Commission unanimously approved the February 26, 2015 Regular Session Minutes, as amended, on motion of Commissioner Sanders, second of Vice Chair Strickler.

The Commission unanimously approved the February 26, 2015 Executive Session Minutes, the March 3, 2015 Regular Session and Executive Session Minutes for Agenda Items 2, and 3, and the March 4, 2015 Regular Session and Executive Session Minutes for Agenda Items 2, and 3, on motion of Vice Chair Strickler, second of Commissioner 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. 2C14/15-1804 Bobs Used Motorcycle Parts, Inc.
2. 2C13/14-1564 High Street International Group, LLC dba Exotic Scapes

3. 2C14/15-1807 Ismael Camacho, ASM, & Irene Gonzalez, ASW, dba I&I Haylift Service
4. 2C13/14-1854 M&M Auto Glass, LLC
5. 2C14/15-1809 Metal Pro, Inc.
6. 2C14/15-1289 National Freight Movers and Logistics, L.L.C. dba NFML Transport
7. 2C13/14-0952 U.S. Air Solutions, LLC

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

1. City of Mesa

Chairman Parker stated that agenda item a. 1. and a. 5. would be removed from the consent agenda and heard separately. The Commission unanimously approved the remaining items on the consent agenda on motion of Vice Chair Strickler, second of Commissioner Sanders.

Andrew Wade advised that Bobs Used Motorcycle Parts, Inc. and Metal Pro, Inc. have obtained workers' compensation insurance and staff is recommending a penalty of \$500.00 against each employer instead of staff's previous recommendation of a \$1,000.00 civil penalty. The Commission unanimously assessed the recommended penalty of \$500.00 against Bobs Used Motorcycle Parts, Inc. on motion of Commissioner Sanders, second of Commissioner Hennelly. The Commission unanimously assessed the recommended penalty of \$500.00 against Metal Pro, Inc. on motion of Commissioner Sanders, second of Commissioner Hennelly.

Discussion and/or Action regarding Legislation.

Scot Butler summarized recent activity at the Legislature and noted that Governor Ducey has signed the budget bills. He added that it did not appear there was anything adverse in the budget relating to the Commission. Mr. Butler described the expectations for the next two weeks including the Legislature adjourning "sine die" on March 31 or April 1, 2015. He commented on some of the bills of interest to the Commission, including HB's 2335, 2348, and 2360, and SB 1443. He added that he did not see anything in SB 1443 that would pose any problems for the Commission.

Discussion and Action Regarding Requests to the Governor's Office for Approval Under Executive Order 2015-01 to Proceed with Rulemaking.

Ms. McGrory stated there are two requests pending: ADOSH recordkeeping and reporting, and the extension of the Crane Operator Certification deadlines.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

99 Cents Only Stores LLC  
 2007 S Power Road  
 Mesa, AZ 85208

Unprogrammed Related  
 Years in Business: 42+  
 Empl. Covered by inspection: 32

Site Location: 2007 S Power Road  
 Mesa, AZ 85208  
 Inspection No: F3189-1027870  
 Inspection Date: 2/05/2015

SERIOUS – Citation 1 - Item 1 – Warehouse: The exit access was not 28 inches wide in several areas of the warehouse where employees and management walkthrough daily to perform their daily job duties. (29 CFR 1910.36(g)(2)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

SERIOUS – Citation 1 - Item 2 – Warehouse: The employer did not train two employees in the safe operation of a Yale Motorized Lift Truck Forklift, model number MPB040-EN24T2748, serial number B827N36526G. (29 CFR 1910.178(l)(1)(i)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Mr. Warren stated this is the second of three establishments with violations and is similar to the matter the Commission heard a couple of weeks ago at one of the employer's other stores. He summarized the citation and proposed penalty as listed. Chairman Parker asked for clarification that the OSHA 300 logs still have not been received and Mr. Warren responded to the question. Following discussion, the Commission unanimously approved issuing the citation and assessed the recommended penalty of \$4,050.00 on motion of Commissioner Sanders, second of Vice Chair Strickler.

Shane & Kristine Enterprises, Inc. dba McDonald's  
7138 E US Highway 60  
Gold Canyon, AZ 85118

Complaint  
Years in Business: 11  
Empl. Covered by inspection: 7

Site Location: 7138 E US Highway 60  
Gold Canyon, AZ 85118  
Inspection No: H1793-1013299  
Inspection Date: 12/11/2014

SERIOUS – Citation 1 - Item 1 – Kitchen Water Heater: An employee had lighted the 75 gallon Bradford White Corporation water heater (model number 75T80E3N and serial number YJ2093135) pilot light that was not inspected annually pursuant to the manufacturer's maintenance instructions. (A.R.S. § 23-403(A)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

SERIOUS – Citation 1 - Item 2 – North Kitchen Exit: The exit door was blocked by cardboard boxes. (29 CFR 1910.37(a)(3)).

Div. Proposal - \$1,350.00

Formula Amt. - \$1,350.00

TOTAL PENALTY - \$3,150.00

TOTAL FORMULA AMT. - \$3,150.00

Mr. Warren summarized the citation and proposed penalty as listed. Commissioner Sanders commented on Citation 1, Item 2 and explained why he believed that it did not appear to be a hazard. Mr. Warren responded to Commissioner Sander's comments and noted some of the things the store manager told the compliance officer during the inspection.

Chairman Parker asked for clarification about Item 1, and whether ADOSH was recommending a citation for inadequate training. Mr. Warren explained what was meant by the reference to an additional instance and noted how the general duty citation was intended to address the employer's failure to properly inspect the water heater and to properly train the employee that was tasked with lighting the water heater. Chairman Parker asked Mr. Warren about the practice in the industry and whether the water heater is a regulated boiler. Mr. Warren responded to the questions.

Commissioner Hennelly asked for clarification noting that the description of Citation Item 1 is for not inspecting the water heater annually and the description in the mounted photograph reads that the water heater was not inspected bi-annually. Mr. Warren explained that the description in the mounted photographs was not accurate and should read that the water heater was not inspected annually.

Chairman Parker asked Mr. Wade about multiple instances of the same violation and grouped citations. Mr. Wade responded to the question, presented an example where grouping multiple instances would be appropriate, and commented that Mr. Warren seemed to be describing two different violations - failure to train and failure to perform a required inspection.

Chairman Parker asked Mr. Warren if the recommendation is essentially a grouped citation, with 1(a) for not inspecting annually and 1(b) for not providing adequate training to employees who would be lighting the water heater pilot light. Mr. Warren agreed with how Chairman Parker summarized the citation.

Ms. McGrory commented on how ADOSH could clarify the citation if needed.

Chairman Parker asked Mr. Warren to describe how citations 1(a) and 1(b) will read. Mr. Warren summarized the descriptions for Item 1(a) under A.R.S. § 23-403(A) as the failure to annually inspect the kitchen water heater, and Item 1(b) as the failure to adequately train the employee who lit the pilot light of the kitchen water heater.

Chairman Parker noted that Citations 1(a) and 1(b) would be grouped for purposes of the penalty with a gravity based \$2,000.00 and a 10% reduction which results in a total of \$1,800.00.

Chairman Parker referred to Commissioner Sanders' comments and explained that it seemed that the employer had a pattern and practice of placing boxes by the door and then just leaving the door blocked until it was somebody's turn, if they remembered, to move the boxes. He added that he could understand both ways of viewing the circumstances. Chairman Parker asked if there was further discussion or a motion.

Vice Chair Strickler moved to approve Items 1(a) and 1(b) and Item 2 for a total penalty of \$3,150.00. Commissioner Hennelly seconded the motion. Chairman Parker, Vice Chair Strickler, and Commission Hennelly voted in favor of the motion which passed with three votes in favor. Commissioner Sanders voted against the motion.

#### Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Parker thanked the Commissioners for their flexibility in moving the next meeting to Wednesday, March 25, 2015. He asked if there were any other dates that needed to be adjusted. There were no requests to adjust the schedule.

Ms. McGrory stated that she received the NCCI's analysis of the proposed changes to the Physician's Fee Schedule along with two alternatives. She added that the NCCI's analysis will be published on the Commission's website.

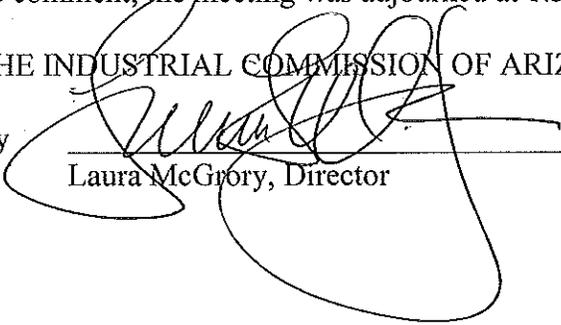
Mr. Warren noted that national Safety Stand Down Day is from May 3 to May 14, 2015, described what this meant, and he summarized some of the ADOSH's planned activities for Safety

Stand Down Day. He added that April 28 is the national Worker Memorial Day and what this means. Ms. McGrory added that this topic is on next week's agenda and noted that there will be a proposed resolution.

There being no further business to come before the Commission and no announcements, future scheduling of meetings, or public comment, the meeting was adjourned at 1:34.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
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Laura McGrory, Director

ATTEST:

  
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Kara Dimas, Commission Secretary