

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Wednesday, May 7, 2014 – 1:00 p.m.

Present:	David M. Parker	Chairman (video conference)
	Susan Strickler	Vice Chair (telephonic)
	Kathleen Oster	Member
	Michael G. Sanders	Member
	Joseph M. Hennelly, Jr.	Member (video conference)
	Laura McGrory	Director
	Andrew Wade	Chief Counsel
	William Warren	ADOSH Director
	Ron Harnsberger	Compliance Officer
	Michael Hawthorne	Chief Financial Officer
	Yvonne Borunda	ALJ Division
	Kara Dimas	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Ms. Strickler had not yet joined the meeting. Also in attendance were Scot Butler, Commission lobbyist; Stephanie Coulter of the Cavanagh Law Firm.

Approval of Minutes of April 23, 2014 Meeting

The Commission unanimously approved the Minutes of the April 23, 2014 General Session on motion of Ms. Oster, second of Mr. Hennelly.

The Commission unanimously approved the Minutes of the April 23, 2014 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. 2C13/14-1160 Ichulas Salon and Spa, L.L.C. dba  
Ichulas Nails & Hair Salon
2. 2C13/14-1201 Laverdi Insurance Group, L.L.C.
3. 2C13/14-1480 Terrance Claw, a single man, dba  
Burbank Transport

4. 2C13/14-0146 The Academy of Angels Learning Center, LLC

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

1. City of Mesa

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

Discussion and/or Action regarding Residential Fall Protection and Federal OSHA's Notice of Initiation of Proceedings to Reject State Initiated Plan Change No. 133, and Reconsider Arizona's State Plan Authority under Section 18(e) of the Occupational Safety and Health Act. The Commission may move into Executive Session under A.R.S. §§ 38-431.03(A)(3) and (A)(4) to consult with its attorneys to obtain legal advice and to consider its position and instruct its attorneys regarding pending or contemplated litigation

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Mr. Wade advised that Arizona submitted its response to the Federal OSHA show cause letter on May 1, 2014. A copy of that response will be available to the public and stakeholders via the Industrial Commission's website.

Discussion and Action of Arizona Division of Occupational Safety and Health (ADOSH)  
Discrimination Complaints

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#14-3633-10 Theresa Kaser vs. Oasis Pavilion Nursing and Rehabilitation Center, LLC – Mr. Warren presented a summary of Ms. Kaser's complaint and the employer's response. Mr. Warren recommended that the Commission not pursue the matter further because the investigation did not identify sufficient evidence to support a causal link between the exercise of protected activity and any adverse action. Mr. Warren responded to questions from the Commissioners. Mr. Sanders asked that the Commission not take action to allow more time to review the investigation file and he explained why. Mr. Parker summarized his view of the evidence and asked staff to describe the elements of a cause of action under A.R.S. § 23-425 and Mr. Wade responded to that request. Mr. Sanders identified some of the investigator's conclusions and explained why he disagreed with those conclusions. Ms. Oster explained her position as did Mr. Hennelly. The Commission voted not to pursue the complaint on motion of Mr. Parker, second of Mr. Hennelly with a vote of three in favor of the motion and one against. Mr. Sanders voted against the motion.

Discussion and/or Action regarding Legislation

Scot Butler presented a brief summary of certain legislative activity, and he noted the session has ended. He stated that there is talk of a special session at the end of May and that session may be limited to issues related to Child Protective Services or now the Child Welfare and Safety Agency or the session could also include some pension reform items. Mr. Butler noted the general effective date for new legislation is July 24, 2014 and he responded to questions from the Commissioners.

Ms. Strickler joined the meeting telephonically at this point.

Discussion and Action of ADOSH Proposed Citations and Penalties

Meadowayne Dairy, Incorporated  
P.O. Box 568  
Colorado City, AZ 86021-0568

Complaint  
Yrs/Business - 30  
Empl. Cov. By Insp. - 5

Site Location: 385 N. Juniper St., Colorado City, AZ 86021-0568  
Inspection No: N4762-317526184  
Inspection Date: 12/04/2013

SERIOUS – Citation 1 - Item 1 –

- a) Milk Parlor, Milk Parlor Mechanical Room, and Bulk Milk Tank Room: The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury. (A.R.S. 23-403.A)

(NOTE: The Milk Parlor, Milk Parlor Mechanical Room, and Bulk Milk Tank Room are part of the milk collection process which falls under the 29 CFR 1928 Agriculture regulations, which do not specifically address Lockout/Tagout requirements to prevent employee injuries).

- b) Dairy Store, Milk Bottling Area, Dairy Refrigeration Area, and Cheese Plant: The employer had not established and implemented a written lockout/tagout program and procedures for the maintenance or servicing on a machine or equipment where the unexpected energizing, start up or release of stored energy could occur and cause injury. (1910.147(c)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 2 – Refrigeration and Storage Areas: The employer did not instruct each powered industrial truck (forklift) operator in the safe operation of the Komatsu Forklift, Model FG20T-8, Serial Number 140810A. (1910.178(l)(1)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 3 – Refrigeration and Storage Areas: The Komatsu Forklift Model FG20T-8, Serial number 140810A, did not have a seat belt installed and the forklift had not been withdrawn from service. (1910.178(p)(1)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS – Citation 1 - Item 4 –

- a) West Wall in Mechanical Room in Dairy Store: The circuit breaker panel had an unused opening, approximately 1 inch tall by 3 inches wide, as there was no cover or circuit breaker installed in the slot to prevent employee contact with energized electrical components inside the panel. (1910.303(b)(7)(i)).

There were three other instances of this violation.

- b) South Wall in Mechanical Room of Dairy Store: One circuit breaker panel, approximately 48" tall by 20" wide, was lacking a dead-front cover, thereby exposing employees to contact with exposed electrical equipment and wiring up to 240 volts. (1910.303(g)(2)(i)).

There were three other instances of this violation.

- c) West Wall of Boiler Area: There were two large junction boxes, one was approximately 5 inches tall by 12 inches long by 5 inches deep and the other was approximately 12 inches tall by 12 inches wide by 5 inches deep, that were lacking covers to prevent employee contact with energized electrical components. (1910.305(b)(2)(i)).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

TOTAL PENALTY - \$3,000.00

TOTAL FORMULA AMT. - \$3,000.00

Mr. Warren summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Mr. Parker, Mr. Harnsberger explained that the switches were for the dairy processing, cheese processing and various pumps and various refrigeration units. Ms. Oster asked a general question regarding the role of Federal OSHA and Mr. Warren responded to the question Mr. Sanders comment on the exposure to energized units and asked how many employees were exposed. Mr. Harnsberger responded to the question. Mr. Hennelly commented on the complaint involving youths working at height without fall protection. Mr. Warren described what the compliance officer found upon arriving at the worksite. Ms. McGrory noted that the State Labor Department is investigating the youth employment issues. 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.

#### Announcements and Scheduling of Future Meetings

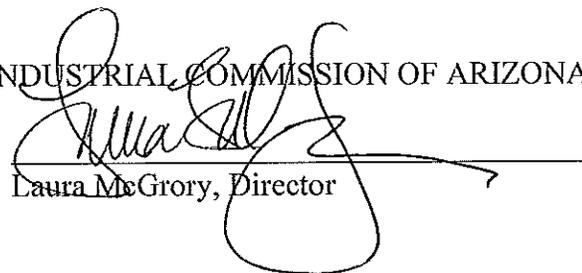
Ms. McGrory noted that today is state employee appreciation and how much Commission employees are valued and appreciated.

The Commission discussed in person and telephone participation for the next meeting scheduled for Tucson,

There being no further business to come before the Commission and no public comment, the meeting was adjourned at 1:53 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

  
Laura McGrory, Director

ATTEST:

  
Kara Dimas, Commission Secretary