MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, September 5, 2024 - 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

Joseph M. Hennelly, Jr.

Vice Chair (Telephonic)

D. Alan Everett

Commissioner

Maria Cecilia Valdez

Commissioner

Orion J. Godfrey

Commissioner

Gaetano J. Testini

Director

Afshan Peimani

Chief Legal Counsel

Lisa Padgett

Deputy Director

Charles Carpenter

Legislative Affairs Chief/Public Information Officer

Renee Pastor

Self-Insurance (Telephonic)

Melissa Spurgeon Christina Sanchez Labor Director Labor Supervisor

Jennifer Cox

Labor Supervisor

Kimberly Gooby Brian Hudson

Labor Investigator **ADOSH Director**

Anna Maria Stonerock

ADOSH Compliance ADOSH Admin

Bethany Votta Kara Dimas

Commission Secretary

Chairman Kavanaugh convened the meeting at 1:01 p.m. In attendance, confirmed by roll call were Geneva Haber (Snell and Wilmer); Anne Ryman (ABC15); Paul Gerbi and Kara Stovall Diaz (Bright Coolidge Property, LLC.); Lilly Roseburrough (ASU student); and Lindsey Wheeler (Premier Risk Management).

Approval of Minutes of August 29, 2024 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the August 29, 2024 regular session meeting and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

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.

Approval of Requests for Renewal of Self-Insurance Authority.

- 1. Albertsons Companies, Inc.
- 2. Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (SRP)
- b. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.
 - 1. UR-2024-JR339-0058 Crimson Commercial, LLC

Commissioner Godfrey moved to approve the items on the Consent Agenda and Commissioner Everett seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0182 Arrowhead Valley Retirement Community LLC DBA Resort Lifestyle Communities, Inc.

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$13,650.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$13,650.00 to Arrowhead Valley Retirement Community LLC DBA Resort Lifestyle Communities, Inc. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

2. RT-2324-0191 MMI Tank & Industrial Services, Inc.

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$6,300.00 for violation of A.R.S. § 23-364 for the verbal warning and a Penalty in the amount of \$6,300.00 for violation of A.R.S. § 23-364 for the written warning for a total Penalty of \$12,600.00 and a \$250.00 civil penalty for non-compliance.

Chairman Kavanaugh asked if the Commissioners had any questions.

Vice Chair Hennelly clarified that while the Claimant was overheard indicating he was going to get his sick time one way or another, there was no evidence that he followed through on that statement and the warnings issued were based on use of sick time, not on some manipulation of sick time. Ms. Spurgeon confirmed.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$12,600.00 and a \$250.00 civil penalty to MMI Tank & Industrial Services, Inc. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

3. RT-2324-0190 Menekse LLC DBA Nick's Westside

Ms. Spurgeon summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Spurgeon recommended that the Commission approve issuance of a Penalty in the amount of \$1,250.00 for violation of A.R.S. § 23-364 and a \$250.00 civil penalty for violation of A.R.S. § 23-364(D) for record keeping.

Chairman Kavanaugh asked how long an employer must keep payroll records. Ms. Spurgeon stated four years. Chairman Kavanaugh noted it is longer than the 10 weeks.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$15,300.00 and a \$250.00 civil penalty to Menekse LLC DBA Nick's Westside. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

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

Chairman Kavanaugh discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Bright Coolidge Property, LLC

Referral

DBA Bright Innovation Labs

Years in Business:

37

4

1301 West Industrial Drive Coolidge, AZ 85128

Empl. Covered by Inspection:

Site Location:

1301 West Industrial Drive

Coolidge, AZ 85128

Inspection No:

RF-2024-MB431-0045

Inspection Date:

March 14, 2024

SERIOUS – Citation 1 - Item 1a –

- a) Bartelt Machine #3: Employees packaged products near a finished product conveyor that did not have the ingoing nip points between the belt and end roller guarded.
- b) Bartelt Machine #2: Employees packaged products near a finished product conveyor that did not have the ingoing nip points between the belt and end roller guarded. 29 CFR 1910.212(a)(1) *Per ADOSH Director causal factor

Div. Proposal - \$13,828.00

Formula Amt. - \$13,828.00

SERIOUS – Citation 1 - Item 1b –

a) Bartelt Machine #3: One employee was operating a Bartelt, IM series Horizontal Form-Fill-Seal Poucher, serial number unknown, that did not have point of operation guarded. 29 CFR 1910.212(a)(3)

Div. Proposal - \$0.00

Formula Amt. - \$11,524.00

SERIOUS – Citation 1 - Item 2 –

a) Bartelt Machine #3: Employees were exposed to an unguarded drive shaft that projected out approximately 5 inches from the back of the machine. 29 CFR 1910.219(c)(4)(i)

Div. Proposal - \$6,453.00

Formula Amt. - \$6,453.00

TOTAL PENALTY - \$20,281.00

TOTAL FORMULA AMT. - \$31,805.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh indicated he had a request to speak from Paul Gerbi.

Mr. Gerbi reviewed what happened on the date of the incident, ADOSH inspection, at the closing they received a list of five issues and all repairs were completed by April 1st and cost a little over \$24,000.00 to get everything shored up and then took it plant wide. All requested documentation was submitted including the OSHA 300 logs. He noted they have done everything they can to make sure they communicated quickly and timely, jumped on all the issues that were brought up and apologized for any gap in communications and asked for forgiveness, they have not submitted the final paper that shows everything has been completed.

Chairman Kavanaugh noted the Commission appreciates his comments and the efforts the company has taken to minimize risks and their cooperation with the ADOSH staff.

Commissioner Valdez asked if the doors that were supposed to stop, have been replaced and corrected. Mr. Gerbi noted they put up light curtains so when they open a door, it shuts the machine off completely. Thy have also retrained everybody to know how to operate around those light curtains. They took everything very seriously and made sure not to delay because they do not want anyone else hurt. The OSHA 300 logs show their rates have gone down the last three to four years.

Commissioner Godfrey moved to amend the citation and proposed penalties due to the employer's proactive actions and timely actions suggested at 10% reduction for a total of \$18,253.00. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

DCS Contracting, Inc.

Referral

11525 E Germann Rd Chandler, AZ 85286 Years in Business:

Empl. Covered by Inspection:

30 11

Site Location:

N Hawes and E Ocotillo Rd

Queen Creek, AZ 85142

Inspection No:

RF-2024-RS480-0115

Inspection Date:

March 26, 2024

WILLFUL-SERIOUS – Citation 1 - Item 1 –

a) 19198 E. Ocotillo Rd, Queen Creek: Two employees were installing a coupling for a pipe in an excavation that was 5-7 feet deep, 3.5 feet wide and 12 feet long when the excavation collapsed and injured the employees. 29 CFR 1926.652(a)(1) *Per ADOSH Director as causal factor

Div. Proposal - \$161,323.00

Formula Amt. - \$161,323.00

TOTAL PENALTY - \$161,323.00

TOTAL FORMULA AMT. - \$161,323.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh noted this is probably the worst trenching incident during his tenure on the Commission, and Willful Serious is appropriate, and he supports the recommendation. He thought this case also potentially is a case for the application of a civil penalty A.R.S. § 23-418.01, where there is a willful serious, an additional civil penalty of \$25,000.00 for each of the employees that were injured. Since at this point, we do not yet know the current condition of those employees who had serious injuries and surgeries, he would like the Commission to make two motions, one to accept the Division recommendation for Willful Serious and the second motion to direct the Division to view the workers' compensation status of each of these two employee assuming they should have filed a workers' compensation claims for this on the job injury to determine what the current status is of their claim and if their injuries would result in a severe permanent impairment and return the findings back to the Commission at the next Commission meeting.

Commissioner Valdez noted she appreciated that motion.

Chairman Kavanaugh noted he did not have a request to speak.

Commissioner Everett moved to approve the citation and proposed penalties as presented and Commissioner Valdes seconded the motion.

Commissioner Valdez moved the second motion for staff to research the workers' compensation injuries and return that status to the Commission at the next Commission meeting to determine if the Commission can levy civil penalties for the two employees. Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Mr. Testini noted that the Commission needed to vote on the first motion.

Chairman Kavanaugh called for a vote on the first motion to approve the proposed citation and penalties. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

EarthTech Services LLC

Complaint

4835 East Indigo Street Mesa, AZ 85205

Years in Business: Empl. Covered by Inspection:

4 3

Site Location:

4240 West Union Hills Drive

Glendale, AZ 85308

Inspection No:

CP-2024-JR339-0057

Inspection Date:

March 18, 2024

Maich 16, 202

SERIOUS – Citation 1 - Item 1 –

a) 4240 W Union Hills Dr: Two employees entered an approximately 6 feet wide, 8 feet long, and 7 feet deep, excavation to connect utility lines without having received training on trenching an excavation safety. 29 CFR 1926.21(b)(2)

Div. Proposal - \$6,453.00

Formula Amt. - \$6,453.00

SERIOUS – Citation 1 - Item 2 –

a) 4240 W Union Hills Dr: Two employees entered an approximately 6 feet wide, 8 feet long, and 7 feet deep, excavation to connect utility lines without a means of access and egress, such as a ladder. 29 CFR 1926.651(c)(2)

Div. Proposal - \$6,453.00

Formula Amt. - \$6,453.00

<u>SERIOUS</u> – Citation 1 - Item 3 –

a) 4240 W Union Hills Dr: Two employees entered an approximately 6 feet wide, 8 feet long, and 7 feet deep, excavation to connect utility lines without a competent person performing inspections of the excavation. 29 CFR 1926.651(k)(1)

Div. Proposal - \$8,067.00

Formula Amt. - \$8,067.00

SERIOUS – Citation 1 - Item 4 –

a) 4240 W Union Hills Dr: Two employees entered an excavation that was approximately 6 feet wide, 8 feet long, and 7 feet deep, with shovels to locate a utility line without a form of protection against cave-ins. 29 CFR 1926.652(a)(1)

Div. Proposal - \$11,292.00

Formula Amt. - \$11,292.00

TOTAL PENALTY - \$32,265.00

TOTAL FORMULA AMT. - \$32,265.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh and Mr. Hudson discussed if it was unusual for a company whose primary job is trenching and excavation to not have a safety program. The power and force of a trench collapse is more indicative as to the need to build a culture for employers to understand the fatal risk of this nature and to have safety management systems. It is important for ADOSH is to continue to develop the relationships with employers to build a culture and stop these types of incidences from occurring.

Chairman Kavanaugh noted the employees of that company are lucky enough that someone made a complaint. Mr. Hudson agreed, someone took the time to be concerned enough to stop the job. When something is not safe you have to stop the job.

Commissioner Godfrey and Mr. Hudson noted the size adjustment was applied since this was a complaint and not an incident.

Commissioner Godfrey moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Maricopa County Sheriff's Office - Food

Referral-Employer Reported

Services Division

Years in Business:

22

3325 W Durango St

Empl. Covered by Inspection:

78

Phoenix, AZ 85009

Site Location:

3150 W Lower Buckeye Rd Site A

Phoenix, AZ 85009

Inspection No:

RF-2024-TM082-0036

Inspection Date:

March 18, 2024

SERIOUS – Citation 1 - Item 1 –

a) Food Pantry Production Room: One employee was exposed to an amputation hazard while picking up balls of dough that were divided by a Konig Classic Rex Dough Divider/Rounder Machine, serial #03.0.6460, that was unguarded at the rear of the machine where the divided and shaped dough was discharged onto a conveyor system. 29 CFR 1910.263(f)(3) *Per ADOSH Director causal factor

Div. Proposal - \$16,131.00

Formula Amt. - \$16,131.00

TOTAL PENALTY - \$16,131.00

TOTAL FORMULA AMT. - \$16,131.00

Mr. Hudson discussed ADOSH's inspection, summarized the citation and proposed penalty.

Chairman Kavanaugh noted he did not have a request to speak.

Commissioner Valdez moved to approve the citation and proposed penalties as presented and Commissioner Godfrey seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through October 2024.

Mr. Carpenter commented last week was Labor Rights Week, it looks at the rights that employees have and are enjoying in this country and in this state. Representatives from the Labor Division, ADOSH and the Ombudsman's Office participate and attended the Mexican Consulate on Friday.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:57 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

Gaetano J. Testini, Executive Deputy Director

By

ATTEST:

Kara Dimas, Commission Secretary