

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, December 5, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner (Telephonic)
	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
	Melissa Spurgeon	Labor Director
	Kimberly Gooby	Labor Investigator
	Brian Hudson	ADOSH Director
	Adaysia Henderson	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Andy Campbell	Chief Administrative Law Judge
	Marilyn Carter	HR Manager (Telephonic)
	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); Lindsey Wheeler (Premier Risk Management); Daniel Enriquez and Ana Avitia (Delicias Framing LLC); Sam Kennedy and Tina Troy (Granite Construction Company).

Approval of Minutes of November 21, 2024 Regular Meeting Minutes.

Commissioner Godfrey moved to approve the Minutes of the November 21, 2024 regular session meeting and Vice Chair Hennelly 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.

- a. Approval of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties Less Than \$15,000.

1. UR-2024-EG419-0073 Drywall Texture Specialists, Incorporated

Commissioner Valdez moved to approve the items on the Consent Agenda 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.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2425-0036 Knight Transportation, 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 \$87,736.10 for violation of A.R.S. § 23-364 and in addition a \$250.00 civil penalty pursuant to A.R.S. § 23-375(C).

Chairman Kavanaugh asked if the Commissioners had any questions.

Chairman Kavanaugh commented for the record that Knight Transportation is a self-insurance employer and will be up for renewal in May, and we take into consideration compliance with all laws, particularly laws that the Commission regulates, and hopefully we will not see additional labor violations in the future.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$87,736.10 and a \$250.00 civil penalty to Knight Transportation, Inc. 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 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.

Cool Blew Electric & Solar L.L.C. 8927 W Bloomfield Rd, Ste 135 Peoria, AZ 85381	Fatality/Catastrophe Years in Business: 14 Empl. Covered by Inspection: 1
Site Location: 11657 W Flycatcher Ct Peoria, AZ 85381	
Inspection No: FC-2024-T3633-0174	
Inspection Date: July 31, 2024	

Mr. Hudson summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending a citation for Cool Blew Electric & Solar L.L.C.

Commissioner Godfrey asked about the location if it was Surprise or Peoria. Mr. Hudson noted he would check and correct the address.

The Commission took no action.



a) Thornydale and Linda Vista: One employee installing a 16" water pipe in an excavation approximately 9' deep that had not been inspected by a competent person. 29 CFR 1926.651(k)(1)

Div. Proposal - \$16,131.00	Formula Amt. - \$16,131.00
TOTAL PENALTY - \$32,262.00	TOTAL FORMULA AMT. - \$32,262.00

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

Chairman Kavanaugh noted he had a request to speak from Sam Kennedy.

Mr. Kennedy thanked the Commission for the opportunity to speak and updated the Commission on the condition of the employee. He noted they were the first VPP contractor and have maintained that status for 15 years and he talked about their safety record. Mr. Kennedy disagrees with the first citation, believing this was an anomaly or freak accident and that they did everything safely. He also disagreed with the second citation that the trench was not adequately inspected because there was a competent person on site.

Mr. Hudson commented he was excited to hear the employee would be returning to work, and did not have any concern about the culture that Granite Construction Company is trying to build, however health and safety is about continuous improvement. He noted in this incident a two-sided trench box was utilized and that is why it is being looked at as inadequate, being used at one end of the trench with an exposure and should be recognized by a competent person

Commissioner Godfrey confirmed with Mr. Hudson for Citation 1, Item 2 that the PPE was good, but the trench protected system was the issue.

Vice Chair Hennelly commented that this sort of situation goes towards the admonition, the Commissioners are not equipped to make that determination when confronted with facts that are contrary. He noted that the date on the citation is at six months and there is not time to remand.

Vice Chair Hennelly moved to approve the citation and proposed penalties as presented and Commissioner Valdez seconded the motion. Vice Chair Hennelly encouraged the employer and ADOSH get together and explore the material that Mr. Kennedy gave and see what exactly occurred and reconcile the different statements and proceed accordingly.

Mr. Hudson noted they try to do that with everyone to build a strong health and safety culture across the state of Arizona.

Commissioner Valdez thanked Mr. Kennedy for the update of the employee.

Chairman Kavanaugh commented that being VPP it does show you go above and beyond the normal requirements and hopes there will be productive discussions.

Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett, Commissioner Valdez and Commissioner Godfrey voted in favor of the motion. The motion passed.

Discussion and/or Action regarding the consideration of candidates for appointment to the position of Administrative Law Judge pursuant to A.R.S. § 23-108.02(A). The Commission may move into Executive Session for the purposes described in A.R.S. § 38-431.03(A)(1) and (A)(3).

Judge Campbell noted the division received 13 applications, seven applicants were selected for interviews, three were interviewed. Judge Campbell presented the three candidates that were interviewed, provided some background and for the Commission's consideration and ranked each candidate for the position, although all are qualified candidates.

Vice Chair Hennelly commented on candidate 1 and is very qualified.

Chairman Kavanaugh appreciated the analysis of the candidates, candidate 1 is impressive and well qualified. He would be comfortable extending an offer of employment to candidate 1 or in the alternative candidate 2.

Vice Chair Hennelly moved to accept Judge Campbell's recommendation to extend an offer to candidate 1 and give Judge Campbell the option of going to the next candidate should candidate 1 not accept the position. Commissioner Valdez seconded the motion.

Commissioner Everett commented that he was on board with the recommendation.

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 January 2025.


Mr. Testini commented that Santa will be visiting the Commission on December 13<sup>th</sup>, in the Tucson Office at 10:00 to 12:00 and then the Phoenix Office at 3:00 to 5:00.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:52 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By   
Gaetano J. Testini, Director

ATTEST:

  
Kara Dimas, Commission Secretary