

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street

Phoenix, Arizona 85007

Thursday, January 16, 2025 – 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 (Telephonic)

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 Labor Director
Vincent Argana Labor Investigator
Brian Hudson ADOSH Director
Phil Murphy ADOSH Assistant Director
Victoria Medina ADOSH Supervisor
Anna Maria Stonerock ADOSH Compliance
Mireya Gomez ADOSH Compliance
Heather Warnock ADOSH Compliance
Bethany Votta ADOSH Admin
Chrystal Wilder ADOSH Admin
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); and Lindsey Wheeler (Premier Risk Management). Also, in attendance on the telephone, confirmed by roll call Tracey Wright (Maricopa County); John Surma (Ogletree Deakins) representing Rural Metro Corporation; James Ryan, Karl Isselhard, Tommy Baldwin and Jay Karlik (Rural Metro Corporation).

Chairman Kavanaugh welcomed everyone to this historic meeting, it is the first meeting in our 100th year anniversary of the Industrial Commission, there will be events to commemorate our 100th Anniversary.

Approval of Minutes of December 19, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the December 19, 2024 regular session meeting 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.

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 Requests for Renewal of Self-Insurance Authority.

1. Federal Express Corporation DBA FedEx Express
2. Maricopa County

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

1. CP-2025-JW184-0131 Kodiak Interiors Group LLC dba Arizona Appliance & Home
2. CP-2025-T3633-0180 Lynch Bros. Mfg. Co.
3. CP-2024-MS021-0032 Mesquite Valley Growers Nursery, LLC
4. CP-2025-JW184-0126 NEFCO Construction Supply, LLC
5. CP-2024-T3633-0179 Phoenix Heat Treating, Inc
6. CP-2024-MB431-0062 Transmission & Automotive Outlet, L.L.C.

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

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2425-0052 Southwest Airlines Co.

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 \$15,750.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh commented that there have been multiple Southwest Airlines cases over the past couple of years and a majority of those cases fell under the 2019 Collective Bargaining Agreement. Now there is a 2023 Collective Bargaining Agreement, and crafting the new Collective Bargaining Agreement Southwest could have inserted a sentence to opt out of the Arizona jurisdiction. He confirmed that in the new Collective Bargaining Agreement they did not do that.

Ms. Spurgeon agreed that there is no express waiver of the earned paid sick time requirements in the 2023 Collective Bargaining Agreement.

Chairman Kavanaugh asked if the Commissioners had any questions. He noted he did not have a request to speak.

Commissioner Valdez moved to approve issuance of a Penalty for Retaliation in the amount of \$15,750.00 to Southwest Airlines Co. 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.

2. RT-2425-0041 Southwest Airlines Co.

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 \$34,800.00 for violation of A.R.S. § 23-364.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$34,800.00 to Southwest Airlines Co. 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.

3. RT-2425-0049 AIKG, LLC AKA Andretti Indoor Karting and Games, LLC

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 \$1,650.00 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 \$1,650.00 to AIKG, LLC AKA Andretti Indoor Karting and Games, LLC. 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.

4. RT-2425-0031 A Great Beginning, Inc. DBA Great Beginnings Preschool

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 \$40,902.20 for violation of A.R.S. § 23-364 for the written warning and termination and in addition a \$250.00 civil penalty pursuant for violation of A.R.S. § 23-372(A) and § 23-375(C).

Chairman Kavanaugh asked if the Commissioners had any questions.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$40,902.20 and a \$250.00 civil penalty to A Great Beginning, Inc. DBA Great Beginnings Preschool. 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.

Rural/Metro Corporation
3579 North Commerce Drive
Tucson, AZ 85705

Referral
Years in Business: 76
Empl. Covered by Inspection: 6

Site Location: 3579 North Commerce Drive
Tucson, AZ 85705
Inspection No: FC-2024-MB431-0068
Inspection Date: August 26, 2024

SERIOUS – Citation 1 - Item 1 –

- a) 3579 North Commerce Drive: Employee engaged in a training exercise and a heat illness program had not been developed and implemented to include topics such as: training employee on the signs and symptoms of heat exposure; acclimatization; levels of excretion; and temperature monitoring. A.R.S. 23-403.A

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.

Commissioner Godfrey asked Mr. Hudson to clarify the reason for the citation and Mr. Hudson explained one reason was a lack of training for recognizing heat illnesses and the other was a lack of acclimation for heat activities in turnouts.

Commissioner Godfrey asked Mr. Hudson if there was information available to any Rural Metro or a company or fire agencies wishing to become informed prior to starting a fire academy in the summer. Mr. Hudson responded affirmatively, noting that Pima County has a heat illness ordinance, and these are identified in that ordinance for contracted companies that work for Pima County. ADOSH also issued a state emphasis program in July 2023 that provides this information, and there are several well-known places and organizations like NIOSH, who also provide information.

Chairman Kavanaugh asked if anyone would like to make any comments.

Mr. Surma spoke on behalf of his client Rural Metro Fire Pima County Operation. Mr. Surma provided background on the cadet and the instructors. He also explained the academy requirements and he described the activities of the day and the weather, and their investigation of the incident. He noted there were two errors in the file, relating to the media reporting the incident, and their documented proof they reported to ADOSH and the temperature for the day, the high was 97 not 108 degrees, 95 or 96 at the time of the incident. It was the second day of the academy, and the personnel involved were all paramedic or EMT trained. They went above and beyond the average employer.

Commissioner Godfrey commented that his heart goes out to the family and the first responders on site that day, as an active firefighter he is familiar with what it is like to treat people in the face of tragedy and no time is worse than treating one of your own. The fact is that we face a growing problem of recruitment and retention in the Arizona fire service, but summer academies are unavoidable and every agency wishing to provide fire and emergency services needs to review its practices and look for ways to maintain and increase training environments to prevent this whenever possible. He did not doubt that the efforts made by personnel were top notch. The reason

that this is before the Commission is the policies were not in place and acclimatization was not in place.

Mr. Hudson noted this is a tough situation and our hearts do go out to the recruit's family, we have other heat-related illnesses in reference to fire service personnel in the field with the proper controls set up and there were heat injuries that occurred, but the policies and programs were set in place. That was not found in this particular inspection. He did not contest, they did not report with 24 hours, that is why they did not receive a reporting citation.

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.

Albatross CCD Inc. 607 19th Street <u>Butner, NC 27509</u>	Program Planned Years in Business: 4 Empl. Covered by Inspection: 6
Site Location: 550 S Rio Vista Dr Yuma, AZ 85365	
Inspection No: PP-2025-EG419-0100	
Inspection Date: November 29, 2024	

WILLFUL-SERIOUS – Citation 1 - Item 1 –

- a) Top Plate: One employee was designating marks for the joists nine feet above the ground without fall protection. 29 CFR 1926.501(b)(13)
- | | |
|-----------------------------|----------------------------------|
| Div. Proposal - \$32,265.00 | Formula Amt. - \$32,265.00 |
| 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 comment this was probably the most clearcut "willful" case he has seen since being on the Commission and asked if the employer had any excuse. Mr. Hudson noted the employer stated it was to be a short job.

Commissioner Everett 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.

OBH, LLC dba Original Breakfast House 13623 North 32nd Street <u>Phoenix, AZ 85032</u>	Complaint Years in Business: 11 Empl. Covered by Inspection: 12
Site Location: 13623 North 32nd Street Phoenix, AZ 85032	
Inspection No: CP-2024-JW184-0117	
Inspection Date: September 26, 2024	

SERIOUS – Citation 1 - Item 1 –

Inspection No: UR-2025-MS021-0045

Inspection Date: October 28, 2024

SERIOUS – Citation 1 - Item 1a –

- a) Scheels All Sports, Inc. at Chandler Fashion Center fish tank: 13 employees performed cleaning and feeding dives with no cardiopulmonary resuscitation and first aid training.

29 CFR 1910.410(a)(3)

Div. Proposal - \$14,518.00

Formula Amt. - \$14,518.00

SERIOUS – Citation 1 - Item 1b –

- a) Scheels All Sports, Inc. at Chandler Fashion Center fish tank: 13 employees performed cleaning and feeding dives with no standby diver. 29 CFR 1910.424(c)(1)

Div. Proposal - \$0.00

Formula Amt. - \$14,518.00

TOTAL PENALTY - \$14,518.00

TOTAL FORMULA AMT. - \$29,036.00

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

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

Commissioner 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.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through February 2025.

Mr. Testini commented that the Governor would be releasing her Budget proposal on Friday.

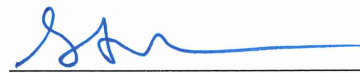
Public Comment.

There was no public comment.

The meeting was adjourned at 2:07 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary