

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, May 12, 2022 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Scott P. LeMarr	Commissioner
	D. Alan Everett	Commissioner
	James Ashley	Director
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Ruby Tate	Claims Manager
	Jessie Atencio	ADOSH Director
	Brandt Smith	ADOSH Supervisor
	John Randolph	ADOSH Investigator
	Anna Maria Stonerock	ADOSH Admin
	Kara Dimas	Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Richard Martinez (Claimant)(telephonic); and Jeff Dollins (Mangum Wall Stoops & Warden Attorney for Alpine).

Approval of Minutes of April 28, 2022 Regular Meeting Minutes.

Commissioner LeMarr moved to approve the Minutes of the April 28, 2022 regular session meeting and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett 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 Proposed Civil Penalties Against Uninsured Employers.
 1. 2CNP21/22-0453 Cat Back Mountain Excavating LLC \$1,000
- b. Approval of Requests for Renewal of Self-Insurance Authority.
 1. Encompass Health Corporation

Chairman Schultz removed Encompass Health Corporation to a later meeting.

Commissioner LeMarr moved to approve the remaining item on the Consent Agenda and Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion & Action regarding Appointment of Special Assistant to the Industrial Commission of Arizona.

Michaelene Raymond

Commissioner Everett moved to appoint Michaelene Raymond as Special Assistant and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and/or Action of Arizona Division of Occupational Safety and Health Discrimination Complaint.

1. WB-19-4067-28 Martinez v. Alpine School District

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH Discrimination Complaints whether the provisions of A.R.S. §23-425 have been violated.

Mr. Atencio reported this matter has merit and noted that the Complainant Mr. Martinez was on the telephone, and Mr. Dollins representing the Alpine School District was in attendance. The Commissioners were provided copies of a memorandum, the ADOSH Findings, the Complainants' Request for Appeal, and Report of Investigation (ROI) for their consideration prior to the Commission Meeting. Mr. Atencio summarized the ROI, noting the complaint was filed timely, and provided the framework for analysis which includes a protected activity, employer knowledge, an adverse action, and a nexus between the protected activity and adverse action. ADOSH was able to establish that protected activity was the reason for the Alpine School District not renewing Mr. Martinez's contract in May 2019 and eventual termination in May 2019. Mr. Atencio reviewed the employer's defense. The investigation did not show clear and convincing evidence that the Respondent terminated the Complainant for his failure to perform his assigned duties and unprofessional conduct. The investigation concluded that the Complainant would not have been terminated but for engaging in the protected activity. Mr. Atencio noted the Supervisor, Mr. Smith and Investigator, Mr. Randolph, were available for questions.

Chairman Schultz checked if the representative for Alpine School District would like to comment.

Mr. Dollins, who represents Alpine School District, stated the District does not admit to the findings that were made in the investigation and requested the Commission not approve the recommendation and close this matter. He explained that it is a very small school district of about 10 employees and 50 students operates informally through verbal conversations as opposed to creating documents for filing in Mr. Martinez's employment file but there were issues that were brought to the District's attention and they cooperated with the investigation and provided documents to the investigator. It is the District's position that Mr. Martinez was terminated for valid reasons.

Chairman Schultz checked if Mr. Martinez would like to make a statement.

Mr. Martinez thanked the Commission for allowing him to speak. He gave his background in the District for over three years and considered himself a model employee with a good working

relationship with all administration and staff, liked by the students and parents and town members and other school staff mentioned he was doing a good job and told he was an asset. He noted he was never written up or reprimanded or told that he failed to do his job or complete a task in a timely manner. The subject of job termination was never brought up or addressed throughout his employment at the school, it was only after he mentioned to administration the need to contact OSHA regarding safety and health standards required for performing work on the school roof. He is convinced he made the right decision and was shocked and disappointed with his termination. He never had a problem doing the job or getting it done in a timely manner and had a daily work log showing all of the work. He did not have any issues with administration and not only did he do his job in a professional manner but he volunteered for a lot of additional tasks. He feels he should still be working at the school. He thanked the Commission for their time.

Commissioner LeMarr made a motion to affirm the decision rendered by ADOSH. Commissioner Everett seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion. The motion passed.

Executive Session under A.R.S. § 38-431.03(A)(3) and (A)(4) to Discuss Arizona Division of Occupational Safety and Health Discrimination Complaint.

1. WB-19-4067-28 Martinez v. Alpine School District

This item was provisional and on the agenda in the event there was a need for executive session to obtain advice from counsel. There was no need for an executive session.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Ashley provided the Commissioners with a few of the AMS successes for the divisions for the month of April including the success that resulted in the Golden Hard Hat being awarded. There was also some discussion about the VPP banner which was mounted outside the Claims Division and resuming quarterly outreach visits.

Ms. Dimas confirmed Commission meeting dates through July 2022.

Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Commissioner LeMarr seconded the motion. Chairman Schultz, Commissioner LeMarr and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 1:42 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By  _____
James Ashley, Director

ATTEST:



Kara Dimas, Commission Secretary