

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, February 23, 2023 – 1:00 p.m.

Present:	Dale L. Schultz	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Gaetano Testini	Chief Legal Counsel
	Trevor Laky	Legislative Affairs Chief/Public Information Officer
	Renee Pastor	Self Insurance
	Lisa Padgett	Labor Director
	Melissa Spurgeon	Labor Supervisor
	Victoria Kamm	Labor Supervisor
	Kimberly Gooby	Labor
	Jennifer Cox	Labor
	Christina Sanchez	Labor
	Jessie Atencio	ADOSH Director
	Anna Maria Stonerock	ADOSH Admin
	Yvonne Borunda	Acting Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Pedro Reyes (J Ginger Masonry, L.P.) Kaila Hopkins (Snell & Wilmer). Also in attendance on the telephone, confirmed by roll call were William Oster, Michel Casciato and Thomas Partin (City of Surprise); Allie Matthews, Sara Hussak, Vince Tracey (City of Tucson); Robert Duff, Brooke Pike, Monica Welsh (City of Yuma); Garrett Mahoney, Roshell Lee, Tracey Foss, Ryan Cole, and Amy Robinson (Securis Insurance Pool, Inc. and Arizona School Alliance for Workers' Compensation, Inc.)

Approval of Minutes of February 16, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the February 16, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly 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 Requests for Renewal of Self-Insurance Authority.

1. City of Surprise

2. City of Tucson
3. City of Yuma
4. The Arizona School Alliance for Workers' Compensation, Inc.

b. Approval of Proposed Youth Employment Penalty.

1. VG Enterprises LLC
2. AZG&C, LLC

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

Update Regarding Securis Insurance Pool, Inc.'s Experience Modification and Discussion of Security Requirements.

Ms. Pastor explained Securis has been self-insured since July 1, 2020. Securis' losses have risen 500k with the covid exposures driving this increase.

Chairman Schultz and Ms. Pastor discussed NCCI and the COVID related losses for the rating formulas. Chairman Schultz and Ms. Pastor discussed the American Rescue Plan Act.

Tracey Foss made comments regarding the approval of renewal rates and gave thanks to Renee for her work.

Vice Chair Hennelly moved to approve staff's recommendation for renewal of self-insurance authority for Securis and to move to an annual review Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2223-0047, Southwest Airlines Co. \$1,000–Retaliation Penalty \$250–Civil Penalty
2. RT-2223-0049, Southwest Airlines Co. \$1,000–Retaliation Penalty

Ms. Padgett provided the background of the Fair Wages and Healthy Families Act which protected employees from retaliation for exercising their rights under the Earned Paid Sick Time law. Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$250.00 for violation of A.R.S. § 23-364.

Vice Chair Hennelly, Chairman Schultz, Ms. Padgett and Viki Kamm discussed the response from Southwest Airlines Co. stating that they felt that it was an inadequate amount of time to respond to the materials from the Commission. Ms. Padgett explained that the Labor Department allows 10 days from the date of the letter, which are calendar days.

Chairman Schultz and Ms. Padgett discussed the amount of the civil penalty. Ms. Padgett explained the process to determine the amount.

Vice Chair Hennelly, Ms. Padgett and Ms. Kamm discussed that Southwest Airlines Co. thought they didn't have to comply with this because of preemptive laws that existed.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$1,000.00 and \$250.00 civil penalty to Southwest Airlines Co. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett voted in favor of the motion. The motion passed.

Ms. Padgett provided the background of the Fair Wages and Healthy Families Act which also protected employees from retaliation for exercising their rights under the Earned Paid Sick Time law. Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Retaliation claim. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$1,000.00 for violation of A.R.S. § 23-364.

Chairman Shultz commented on the employee's attendance records. Chairman Schultz commented on the excellent investigation and fair calculation of the penalties.

Vice Chair Hennelly moved to approve issuance of a Penalty for Retaliation in the amount of \$1,000.00. Commissioner Everett seconded the motion. Chairman Schultz, Vice Chair Hennelly and Commissioner Everett 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 Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Alpine Mechanical & Service, Inc.
23027 N 15th Ln
Phoenix, AZ 85027

Site Location: 6901 E Main St
Scottsdale, AZ 85251
Inspection No: UR-2022-E7721-0056
Inspection Date: August 29, 2022

Unprogrammed Related
Years in Business: 22
Empl Covered by Inspection 1

SERIOUS – Citation 1 - Item 1 –

a) First floor: One employee was performing housekeeping work, fell 11' through a floor hole measuring 39 1/2" by 28 1/2" that was lacking a cover. 29 CFR 1926.501(b)(4)(ii)
Div. Proposal - \$5,000.00 Formula Amt. - \$5,000.00
TOTAL PENALTY - \$5,000.00 TOTAL FORMULA AMT. - \$5,000.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Commissioner Everett asked if the abatement is covering the hole. Mr. Atencio responded that it did address the hole and marking it as well.

Chairman Schultz asked Mr. Atencio did they have other issues or training and/or safety programs. Mr. Atencio responded that they do have some training.

Chairman Schultz noted that in the pictures of the scaffolding there are no toeboards. Mr. Atencio responded that those are required only when employees are working directly under the scaffolding. The scaffolding employees can establish a controlled access zone. Chairman Schultz asked if there was any ability for anyone to walk underneath.

Chairman Schultz had a question related to the saw. He did not see that the employee is wearing eye protection and hearing protection. Jessie reviewed the file but was unable to determine if the employe has eye or hearing protection.

Chairman Schultz checked if Mr. Reyes would like to comment.

Mr. Reyes commented that the site supervisor, foreman, superintendent and several employees on that job are no longer with the company. The company has been in the state for five years. Mr. Reyes stated one month prior to the inspection he provided training and showed all the tools that J Ginger Masonry, L.P. uses. Mr. Reyes brought up the frustration of the employees not following the training that was given to them. J Ginger Masonry L.P. has done additional training after the inspection. Mr. Reyes asked if the Commission had any questions. No questions were asked.

Chairman Schultz thanked Mr. Reyes for appearing and thanked him for showing he cared. Chairman Schultz asked Mr. Reyes if he would share the safety and health program and any records of the training that has been done with Jessie or Compliance and to reach out to the Consultation team for training.

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

Shamrock Foods Company	Referral
2228 N Black Canyon Highway	Years in Business: 100
Phoenix, AZ 85009	Empl. Covered by Inspection: 5,730
Site Location:	2228 N Black Canyon Highway
	Phoenix, AZ 85009
Inspection No:	RF-2023-A7717-0033
Inspection Date:	December 9, 2022

SERIOUS – Citation 1 - Item 1a –

- a) 2228 N Black Canyon Highway, Phoenix, AZ: Types of guarding. One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are-barrier guards, two-hand tripping devices, electronic safety devices, etc. 29 CFR 1910.212(a)(1)

Div. Proposal - \$8,806.00	Formula Amt. - \$8,806.00
TOTAL PENALTY - \$8,806.00	TOTAL FORMULA AMT. - \$8,806.00

Mr. Atencio discussed ADOSH's inspection, summarized the citation and proposed penalty, and reviewed the photographs.

Chairman Schultz noted that when he saw the pictures, he was trying to create in his mind what would have been the best way to create for the workers to be protected. Mr. Atencio commented there were a couple of way to have handled this. Mr. Atencio stated that they have abated the machine.

Chairman Schultz checked if anyone would like to comment. There was no comment.

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

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Chairman Schultz and Mr. Atencio discussed the ADOSH progress in filling their positions and the restructuring Mr. Atencio has done in training.

Mr. Laky updated the Commissioners that Federal OSHA has withdrawn its Federal Register posting with respect to our state plan recognizing and confirming the effectiveness of our ADOSH state plan.

Ms. Borunda confirmed Commission meeting dates through April 2023.

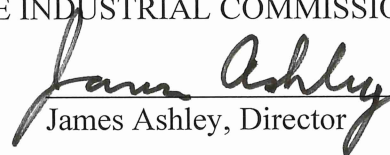
Public Comment.

There was no other public comment.

Commissioner Everett moved to adjourn and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Everett voted in favor of the motion and the meeting was adjourned at 2:39 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By


James Ashley, Director

ATTEST:


Yvonne Borunda, Acting Commission Secretary