

MINUTES OF MEETING
OF THE INDUSTRIAL COMMISSION OF ARIZONA
Held at 800 West Washington Street
Phoenix, Arizona 85007
Thursday, August 17, 2023 – 1:00 p.m.

Present: Dennis P. Kavanaugh Chairman
Joseph M. Hennelly, Jr. Vice Chair (Telephonic)
D. Alan Everett Commissioner
Maria Cecilia Valdez Commissioner (Telephonic)

Gaetano J. Testini Director
Afshan Peimani Chief Legal Counsel (Telephonic)
Trevor Laky Legislative Affairs Chief/Public Information Officer
Lisa Padgett Labor Director
Melissa Spurgeon Labor Supervisor
Christina Sanchez Labor Investigator
Alissa Bodie Labor Investigator
Amanda Schaar Labor Investigator
Kara Dimas Commission Secretary

Chairman Kavanaugh convened the meeting at 1:02 p.m. In attendance, confirmed by roll call was Anne Ryman (ABC15).

Approval of Minutes of August 11, 2023 Regular Meeting Minutes.

Commissioner Everett moved to approve the Minutes of the August 11, 2023 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action regarding Proposed Retaliation Penalty.

Ms. Padgett removed ST-2223-0325, Conair LLC of Arizona, Item 4, from the Agenda.

1. RT-2223-0125, Southwest Airlines Co.

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 \$29,550.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh stated Southwest could have mitigated the potential penalties by removing the letter from the Claimant's personnel file, even if there is a disagreement over the applicability of the Collective Bargaining Agreement. Ms. Padgett agreed.

Vice Chair Hennelly understands that Southwest is a sophisticated and large corporation with lot of resources, but he asked if there was any indication on why they refuse to change their behavior and continue to get these penalties.

Ms. Sanchez responded that they do not feel that they are violating the law and state that they have carved out nine days that are completely protected, but they are still using those nine days on the writeup for their disciplinary action.

Ms. Sanchez noted that they ask on every investigation if the letter has been removed.

Chairman Kavanaugh noted the Arizona Law was passed by voters in 2016 and went into effect shortly thereafter, this Collective Bargaining Agreement was entered into in 2019 and certainly would expect that Southwest's attorney would have been aware of the applicability of the Arizona law given the thousands of employees they have in Arizona. It would have been a very simple thing to craft in their Agreement regarding opting in or opting out.

Ms. Pagett and Ms. Sanchez agreed.

Commissioner Everett asked if Southwest appealed or challenged any of the earlier cases and the process.

Ms. Pagett noted they have appealed all of them to the Administrative Law Judge division.

Chairman Kavanaugh asked if the Commissioners had any other questions.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$29,550.00 to Southwest Airlines Co. Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

2. RT-2223-0131, Southwest Airlines Co.

Ms. Padgett summarized the Labor Department's two 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 \$20,100.00 for the first violation and \$13,800.00 for the second violation for a total of \$33,900.00 of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$33,900 to Southwest Airlines Co. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

3. RT-2223-0136, Southwest Airlines Co.

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 \$36,750.00 for violation of A.R.S. § 23-364.

Chairman Kavanaugh asked if the Commissioners had any questions or comments.

Commissioner Everett moved to approve issuance of a Penalty for Retaliation in the amount of \$36,750.00 to Southwest Airlines Co. Commissioner Valdez seconded the motion. Chairman

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

Discussion and Action Regarding Earned Paid Sick Time - Civil Penalty.

1. ST-2223-0286, Exceptional Health Care Maricopa LLC

Ms. Padgett summarized the Labor Department's investigation into the Earned Paid Sick Time (EPST) Civil Penalty that was not accruing and not accurate. Ms. Padgett recommended that the Commission approve issuance of a Penalty in the amount of \$1,000.00 for subsequent civil penalty for violation of A.R.S. § 23-372(A), A.R.S. § 23-375(C), and A.R.S. § 23-372(D)(4).

Chairman Kavanaugh confirmed with Ms. Padgett that the prior Civil Penalty cited for on April 10, 2023 was paid.

Commissioner Everett moved to approve issuance of a subsequent Civil Penalty for EPST violation in the amount of \$1,000.00 to Exceptional Health Care Maricopa LLC. Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Discussion and Action of Attorney Fee Petition. This agenda item may include discussion concerning the processing of attorney fee petitions and the reasonable hourly rates used in analyzing fee petitions.

Ms. Peimani noted that the Legal Division will be reviewing the rates allotted for the attorney's based on a 2013 Memo with the hourly rate approved and may be outdated and will review and present to the Commission at a later time.

Viskovic and Archambeault – Mr. Peimani summarized that the Applicant, Mr. Archambeault, hired the firm Jerome Gibson. Attorney Coughlin worked on various issues in the matter until he left the firm. The firm filed a petition to recoup some of the expenses and time allotted to the Applicant. Based on the Settlement Agreement and the 20% fee agreement, the firm would be owed \$5,200, but the calculated hourly rate results in \$1,063.50 in fees earned; averaging the two fee rates equals \$3,100 in fees to allot to the firm. There is funds in the trust account to do a lump sum payment. It is the Legal Division's recommendation that the Commission approve \$3,100.00 in fees be awarded to the firm of Jerome Gibson.

Chairman Kavanaugh clarified that it is his understanding that there is no opposition by the Applicant to the recommendation in this matter.

Ms. Peimani noted they always reach out to the Applicant and did not see any opposition.

Chairman Kavanaugh noted his opinion that Mr. Cooley did a good job in analyzing the case.

Commissioner Everett moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees in the amount of \$3,100.00 and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Wisniewski and Urtuzuastegui – Mr. Peimani summarized that the Applicant Mr. Urtuzuastegui hired the Law Office of Robert E. Wisniewski. Attorney Wisniewski worked on various issues in the matter and obtained a settlement award of \$26,577.15 and requested the usual Fee Agreement of 25% for an amount of \$6,644.29. Mr. Wisniewski has already received \$885.90. Based on review of the hours spent and rate. It is the Legal Divisions recommendation that the Commission approve the remaining \$5,758.62 be awarded to the Law Office of Robert E. Wisniewski.

Commissioner Everett moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees in the amount of \$5,758.62 and Vice Chair Hennelly seconded the motion. Chairman Kavanaugh, Vice Chair Hennelly, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Mr. Testini noted in the morning there was an Agency All-Hands meeting.

Mr. Testini also noted the successful Claims Seminar last week. He awarded the Golden Hard Hat for August to the Seminar Team of Ruby Tate, Cherry Neumann, Myketa Coker, Tina Brown, Don Denmon, Sherinda Little and Audrika Gavins.

Ms. Dimas confirmed Commission meeting dates through October 2023.

Public Comment.

There was no public comment.

The meeting was adjourned at 1:40 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Director

ATTEST:



Kara Dimas, Commission Secretary