## MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Phoenix, Arizona 85007 Thursday, October 5, 2023 - 1:00 p.m.

Present: Dennis P. Kavanaugh

Chairman

D. Alan Everett

Commissioner

Maria Cecilia Valdez

Commissioner

Gaetano J. Testini

Director

Afshan Peimani

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief/Public Information Officer

Renee Pastor

Self-Insurance (Telephonic) Assistant ADOSH Director

Phil Murphy Anna Maria Stonerock

**ADOSH Admin** 

Sophia Cox

Assistant Chief Legal Counsel

Kara Dimas

**Commission Secretary** 

Chairman Kavanaugh convened the meeting at 1:01 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15) and Paige Millan (Snell and Wilmer).

# Approval of Minutes of September 28, 2023 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the September 28, 2023 regular session meeting and Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner Everett and Commissioner Valdez 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. DG Retail, LLC
- 2. Federal Express Corporation DBA FedEx Express
- 3. FedEx Freight, Inc.
- 4. FedEx Ground Package System, Inc.

Commissioner Everett moved to approve the items on the Consent Agenda and Commissioner Valdez seconded the motion. Chairman Kavanaugh, Commissioner Everett and Commissioner Valdez 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.

Nex Gen Farm Management, Inc.

Fatality

1644 S Engler Ave

Years in Business:

Empl. Covered by Inspection:

18 4

Yuma, AZ 85365

1644 S Engler Ave

Yuma, AZ 85365

Inspection No:

Site Location:

FC-2023-A7717-0120

Inspection Date:

July 21, 2023

Mr. Murphy summarized ADOSH's investigation and reviewed the file. ADOSH was not recommending any citation for Nex Gen Farm Management, Inc.

The Commission took no action.

Mr. Murphy removed J.G. Sheet Meal and Roofing Pro LLC from today's agenda.

La Canasta Mexican Food Products, Inc.

Complaint

3101 W Jackson St

Years in Business:

Empl. Covered by Inspection:

51

25

Phoenix, AZ 85009

3101 W Jackson St

Phoenix, AZ 85009

Inspection No:

Site Location:

CP-2023-T3633-0121

Inspection Date:

August 3, 2023

### SERIOUS – Citation 1 - Item 1 –

a) Roof: Employees maintained coolers located on the roof of the facility and skylights which were approximately 25 feet above the plant floor were not guarded. 29 CFR 1910.28(b)(3)(i) Div. Proposal - \$6,250.00 Formula Amt. - \$6,250.00

#### SERIOUS – Citation 1 - Item 2 –

a) 3101 W Jackson St, Phoenix: One employee who was assigned to work on equipment including coolers had not been trained concerning the employer's energy control (lockout/tagout) program. 29 CFR 1910.147(c)(7)(i)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

# SERIOUS - Citation 1 - Item 3 -

a) Factory main floor: The Stephan brand recycled tortilla grinder, type MCH20K and machine #717917.01 did not have the screw auger at the bottom of the hopper adequately guarded in that the hopper guard had gaps up to five inches wide which would not prevent the operator from contacting the rotating moving parts. 29 CFR 1910.212(a)(1)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

## SERIOUS – Citation 1 - Item 4 –

- a) Maintenance shop: A circuit breaker box located on the north wall had 11 unused openings which were not closed.
- b) Maintenance shop: A circuit breaker box located on the south wall had two unused openings which were not closed. 29 CFR 1910.305(b)(1)(ii)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

TOTAL PENALTY - \$25,000.00

TOTAL FORMULA AMT. - \$25,000.00

Mr. Murphy discussed ADOSH's inspection, summarized the citation and proposed penalties.

Chairman Kavanaugh noted one item was abated and Mr. Murphy agreed.

Commissioner Valdez moved to approve the citation and proposed penalties as presented and Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Indigo Contracting-LLC DBA Paint and Contracting

2415 W Huntington Dr, Ste 101

Programmed Planned

Years in Business: 23

Empl. Covered by Inspection:

Tempe, AZ 85282

15400 W Monte Vista Rd

Goodyear, AZ 85395

Inspection No:

Site Location:

CP-2023-A7717-0131

Inspection Date:

August 30, 2023

## SERIOUS – Citation 1 - Item 1 –

a) Building #4 Rooftop: Two employees were exposed to a fall hazard while working on the roof of a new three story multi-family residential building to paint the coping metal on approximately 28" tall parapets without the use of a fall protection system. 29 CFR 1926.501(b)(13)

Div. Proposal - \$6,250.00

Formula Amt. - \$6,250.00

TOTAL PENALTY - \$6,250.00

TOTAL FORMULA AMT. - \$6,250.00

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

Commissioner Everett moved to approve the citation and proposed penalty as presented and Commissioner Valdez seconded the motion. Chairman Kavanaugh, 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.

Montrose and Arredondo – Ms. Peimani summarized that the Applicant, Mr. Arredondo, hired Mr. Montrose's firm, who worked about 14 hours on the Applicant's file, as itemized. Based on what was presented in the petition, the work performed did benefit Mr. Arredondo. Before Mr. Montrose's employment was terminated he received some of the fees paid to him which has been deducted. It is the Legal Division's recommendation that Mr. Montrose receive payment for 14

hours at the approved hourly rate of \$200.00 and deducting \$1,629.71 that has already been received. It is the Legal Divisions recommendation that the Commission approve the remaining \$1,170.29 be awarded to Mr. Montrose.

Commissioner Valdez moved to adopt the recommendation from the Legal Department for the Findings and Award granting attorney's fees in the amount of \$1,170.29 and Commissioner Everett seconded the motion. Chairman Kavanaugh, Commissioner Everett and Commissioner Valdez voted in favor of the motion. The motion passed.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2023.

### Public Comment.

There was no public comment.

The meeting was adjourned at 1:23 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

Gaetano J. Testini, Director

ATTEST:

Kara Dimas, Commission Secretary