

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA  
Held at 800 West Washington Street  
Phoenix, Arizona 85007  
Thursday, May 30, 2024 – 1:00 p.m.

Present:	Dennis P. Kavanaugh	Chairman
	Joseph M. Hennelly, Jr.	Vice Chair
	D. Alan Everett	Commissioner
	Maria Cecilia Valdez	Commissioner
	Orion J. Godfrey	Commissioner (Telephonic)
	Gaetano J. Testini	Director
	Sophia Cox	Assistant Chief Legal Counsel
	Lisa Padgett	Deputy Director
	Charles Carpenter	Legislative Affairs Chief/Public Information Officer
	Sylvia Simpson	Chief Financial Officer
	Renee Pastor	Self Insurance (Telephonic)
	Melissa Spurgeon	Labor Director
	Christina Sanchez	Labor Supervisor
	David Baugh	Labor Investigator
	Kimberly Gooby	Labor Investigator
	Alissa Bodie	Labor Investigator
	Brian Hudson	ADOSH Director
	Victoria Medina	ADOSH Compliance
	Tom Martz	ADOSH Compliance
	Anna Maria Stonerock	ADOSH Compliance
	Bethany Votta	ADOSH Admin
	Andy Campbell	Chief Administrative Law Judge
	Marilyn Carter	HR Manager (Telephonic)
	Valerie Ruiz	MRO Manager
	Renee Englen	MRO Assistant
	Kara Dimas	Commission Secretary

Chairman Kavanaugh convened the meeting at 1:00 p.m. In attendance, confirmed by roll call were Anne Ryman (ABC15); Stephanie Hefner (Snell and Wilmer); Ashley Lee (City of Phoenix - Water Services); Deb Baker (Valley Schools Workers Compensation Group); Sunshine Johnson; Courtney Baker; Patti Marsillo; Jerlene Carpio. Also in attendance on the telephone, confirmed by roll call were Troy Cahill and Jim Clarke (OnTrac Logistics).

Public Hearing to accept comments and other information regarding the assessment under A.R.S. § 23-1065(F). During this hearing, the Commission may also discuss the assessment and information relevant to the levying of the assessment.

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Ms. Simpson presented for the Assessment Hearing. Under Arizona Revised Statute § 23-1065(F), the Commission is authorized to levy a one-half percent assessment if the total annual reserved liabilities of the Special Fund for apportionment under A.R.S. § 23-1065 (B) and (C) exceed six million dollars. The apportionment assessment has not been levied since 2015 because the Special Fund has had an actuarial surplus.

As of the most recent actuarial study dated June 30, 2023, the Special Fund liability for apportionment had a confidence level of 80%, and the liability exceeds the \$6 million minimum required to levy the one-half percent assessment. As such, there is authority to levy the one-half percent assessment under A.R.S. § 23-1065(F) for calendar year 2025.

The decision to set the apportionment assessment rate will be discussed at a future Commission meeting and will be based on the current and projected financial condition and operating needs of the Special Fund. As of the most recent financial audit, June 30, 2023, the fund was operating with a surplus.

Commissioner Everett noted Montgomery Wards was still listed and asked if they will be removed at some point in time in reference to the insolvent companies list.

Ms. Simpson explained how long a company remains on the list.

Chairman Kavanaugh commented the claims have to stay until all of the claimants have passed away, but there will not be new or additional claims.

There was no public comment for this item.

Chairman Kavanaugh concluded the public hearing and comment period for this matter.

#### Approval of Minutes of May 16, 2024 Regular Meeting Minutes.

Commissioner Valdez moved to approve the Minutes of the May 16, 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.

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##### a. Approval of Requests for Renewal of Self-Insurance Authority.

1. ABF Freight System, Inc.
2. The Salvation Army USA, Western Territory

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

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|-----------------------|---|
| 1. RF-2024-TM082-0012 | Berrcor Engineering, Inc.                   |
| 2. PP-2024-TN976-0025 | Kay Constructors, LLC                       |
| 3. CP-2024-TN976-0028 | Levinson Consulting LLC dba Vision Flooring |

4. CP-2024-JW184-0070
5. CP-2024-AD245-0012

NPL Construction Co. dba TPL Construction Co.  
Royal Paper, LLC

Chairman Kavanaugh noted that Ms. Pastor had requested to remove the self-insurance renewal for The Salvation Army USA, Western Territory from today's meeting.

Vice Chair Hennelly moved to approve the remaining items on the Consent Agenda with The Salvation Army USA, Western Territory being removed. 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 Sick Time Subsequent Civil Penalty.

1. ST-2324-0256 Dollar Tree Stores, Inc.

Ms. Spurgeon summarized the Labor Department's investigation into a repeat Earned Paid Sick Time (EPST) violation. Ms. Spurgeon noted on January 23, 2023, the Labor Department assessed a \$250 civil penalty against Dollar Tree Stores, Inc. for violating A.R.S. § 23-372(D)(4) and A.R.S. § 23-375(C), which was paid by the employer. On March 11, 2024, the Labor Department received another complaint against the employer for EPST and upon investigation it determined the employer was still not in compliance with the statutes. The Department recommended issuance of a subsequent Civil Penalty of \$1,000.00 for violation of A.R.S. § 23-372(D)(4) and A.R.S. § 23-375(C).

Chairman Kavanaugh asked if the Commissioners had any questions.

Commissioner Everett moved to approve the issuance of a Subsequent Civil Penalty in the amount of \$1,000.00 to Dollar Tree Stores, Inc. 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.

Discussion and Action regarding Proposed Retaliation Penalty.

1. RT-2324-0107 Savista, 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 \$3,300.00 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 \$3,300.00 to Savista, 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.

Discussion and Action regarding Proposed Youth Employment Penalty.

Chairman Kavanaugh noted the coversheet had been corrected for this matter. Ms. Sanchez noted the corrections and explained the matter.



1. YL-2324-0047 - LRS, LLC – Ms. Spurgeon summarized the Labor Department’s investigation following the receipt of a work injury report stating that a 15 year old youth was injured while cooking or baking by spilled hot oil. The investigation produced evidence that the youth was working in a prohibited employment and working more than 3 hours in one day on a day when school was in session, more than 18 hours per week when school is in session, and past 9:30 p.m. on days preceding a day when school is in session. She explained the findings regarding numerous violations of Arizona law regarding A.R.S. § 23-232(A)(8)(b); A.R.S. § 23-233(A)(2), A.R.S. § 23-233(A)(4), and A.R.S. § 23-233(B). Ms. Spurgeon recommended a penalty of \$900.00.

Chairman Kavanaugh noted the 15 year old was injured while cooking and the rules are clear, that no one under 16 should be working in cooking and baking. Work hours seem clear, and asked if the employer had any response or excuse.

Mr. Baugh noted the employer listed the youth’s job title as dishwasher, but on the incident report the job title was fryer.

Commissioner Valdez moved to approve issuance of a Penalty for Youth Employment in the amount of \$900.00 to LRS, 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.

2. YL-2324-0046 - Perkins Natural Resources, LLC – Ms. Spurgeon summarized the Labor Department’s investigation following the receipt of a work injury report stating that a 17 year old youth was injured while using a power driven woodworking machine involving a corkscrew auger. The investigation produced evidence that the youth was working in a prohibited employment. She explained the findings regarding a violation of A.R.S. § 23-231(a)(5). Ms. Spurgeon recommended a penalty of \$1,000.00.

Chairman Kavanaugh confirmed this matter was brought to the Labor Divisions attention by the workers’ compensation injury referral and not a notification from the employer.

Commissioner Everett moved to approve issuance of a Penalty for Youth Employment in the amount of \$1,000.00 to Perkins Natural Resources, LLC. 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.

#### 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.

City of Phoenix- Water Services Department  
Val Vista Water Treatment Plant  
251 W Washington St  
Phoenix, AZ 85003

Referral  
Years in Business: 40  
Empl. Covered by Inspection: 3

Site Location: 3200 E McDowell Rd  
Mesa, AZ 85213  
Inspection No: RF-2024-VM508-0029



Inspection Date: December 19, 2023

SERIOUS – Citation 1 - Item 1 –

- a) Dewatering Building: Employees exposed to head injuries while working in the facility where Alfa Laval Dewatering Centrifuge (Model #DS-706 and Serial #7.000.070) and a Yale wire rope hoist/trolley (Model #CEW 10X25 RT1404; Serial #1604382-0) were located and a hazard assessment had not been conducted. 29 CFR 1910.132(d)(1)  
Div. Proposal - \$11,162.00 Formula Amt. - \$11,162.00

SERIOUS – Citation 1 - Item 2 –

- a) 3200 West McDowell Road, Mesa: Employees exposed to struck by hazards due to the absence of specific LOTO procedures for isolating gravitational energy while servicing Alfa Laval Dewatering Centrifuge (Model #DS-706 and Serial #7.000.070). 29 CFR 1910.147(c)(4)(ii)(B)  
Div. Proposal - \$11,162.00 Formula Amt. - \$11,162.00

SERIOUS – Citation 1 - Item 3 –

- a) Dewatering Building: Employees exposed to struck by hazards due to performing semi-routine Alfa Laval Dewatering Centrifuge (Model #DS-706 and Serial #7.000.070) maintenance tasks while extremities were positioned directly underneath a suspended heavy load. 29 CFR 1910.184(c)(9)  
Div. Proposal - \$11,162.00 Formula Amt. - \$11,162.00

SERIOUS – Citation 1 - Item 4 –

- a) 3200 West McDowell Road, Mesa: Employees exposed to struck by hazards due to lack of thorough sling inspections at least every 12 months. 29 CFR 1910.184(e)(3)(i)(D)  
Div. Proposal - \$11,162.00 Formula Amt. - \$11,162.00  
TOTAL PENALTY - \$44,648.00 TOTAL FORMULA AMT. - \$44,648.00

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

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

Commissioner Valdez moved to approve the citation and proposed penalties as presented 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.

OnTrac Logistics, Inc.  
9774 Calabash Ave  
Fontana, CA 92335

Site Location: 7400 West Buckeye Road  
Phoenix, AZ 85043  
Inspection No: CP-2024-VM508-0025  
Inspection Date: December 4, 2023

Complaint  
Years in Business: 20  
Empl. Covered by Inspection: 93

SERIOUS – Citation 1 - Item 1 –

- a) Van Line #1 Front End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.5 inches at widest point exposing rotating part.
- b) Van Line #1 Back End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.75 inches at widest point exposing rotating part.
- c) Van Line #2 Front End: Employees exposed to Talos Powered Conveyor system unguarded end pulley with a gap measuring 0.5 inches at widest point exposing rotating part. 29 CFR 1910.219(d)(1)

Div. Proposal - \$6,250.00	Formula Amt. - \$6,250.00
TOTAL PENALTY - \$6,250.00	TOTAL FORMULA AMT. - \$6,250.00

Chairman Kavanaugh noted this matter was deferred from an earlier meeting and has now come back with additional information.

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

Mr. Cahill thanked the Commission for letting them appear. He disputed that a closing conference was held, especially since, there was a follow-up request for information on December 12. He contends that PPE requirements regarding footwear do not apply to their people, and they have policies in place to protect them.

Mr. Hudson commented that he wanted to make sure it is clear that the closing conference was identified at the time with the Compliance Officer. Only one member of management needs to be present, the rest of the information is shared out with that company from them, it is not ADOSH's responsibility to make sure that all members of management are aware of any closing conference of that nature.

Chairman Kavanaugh clarified, if the Commission approves the divisions' recommendations, Mr. Cahill and the employer have the right to contest that as part of the process, which often happens, there will be an informal conference to review and discuss the investigation.

Mr. Hudson agreed and noted he is the individual that has those conversations, and they do happen.

Vice Chair Hennelly 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.

Chairman Kavanaugh noted to Mr. Cahill, he has the opportunity to further discuss this with staff in effort to resolve or identify further issues.

Mr. Cahill thanked the Commission for the opportunity.

Verde Canyon Rail Road, L.L.C.  
300 N Broadway  
Clarkdale, AZ 86324

Site Location: 300 N Broadway

Complaint	
Years in Business:	34
Empl. Covered by Inspection:	5

Clarkdale, AZ 86324  
CP-2024-TM082-0015  
December 11, 2023

SERIOUS – Citation 1 - Item 1 –

- a) 300 N Broadway, Clarkdale: Two employees were hanging Christmas decorations at ten feet above the next lower level without being provided fall protection training. 29 CFR 1926.453(b)(2)(v)  
Div. Proposal - \$7,813.00 Formula Amt. - \$7,813.00

SERIOUS – Citation 1 - Item 2 –

- a) 300 N Broadway, Clarkdale: Two employees were hanging Christmas decorations at ten feet above the next lower level without being provided fall protection training. 29 CFR 1926.503(a)(1)
- |                 |             |                      |             |
|-----------------|-------------|----------------------|-------------|
| Div. Proposal - | \$7,813.00  | Formula Amt. -       | \$7,813.00  |
| TOTAL PENALTY - | \$15,626.00 | TOTAL FORMULA AMT. - | \$15,626.00 |

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

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

Commissioner Everett moved to approve the citation and proposed penalties as presented and 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.

Discussion and/or Action regarding the consideration of candidates for appointment to the position of Administrative Law Judge pursuant to A.R.S. § 23-108.02(A). The Commission may move into Executive Session for the purposes described in A.R.S. § 38-431.03(A)(1) and (A)(3).\_\_\_\_\_

Judge Campbell noted there were three applicants selected for a position in the Phoenix office. Judge Campbell presented three candidates that were interviewed and for the Commission's consideration and ranked each candidate for the position, although all are qualified candidates.

Chairman Kavanaugh asked the Commissioners if they would like to interview the top two candidates or make a motion.

Vice Chair Hennelly noted he did not feel the need to interview the candidates.

Commissioner Valdez noted she was satisfied with the recommendation and thorough information was provided.

Commissioner Godfrey noted he upholds the recommendation,

Chairman Kavanaugh moved to accept Judge Campbell's recommendation to extend an offer to the top ranked candidate and give Judge Campbell the option of going to the next candidate should the top ranked candidate not accept the position. Commissioner Valdez seconded the motion.



Chairman Kavanaugh commented he appreciates the work done by Judge Campbell and the detail in the information on the candidates. 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.

Chairman Kavanaugh recognize a friend and colleague Deb Baker who is retiring from the Arizona workers' compensation community at the end June, after many years of service as Director of Valley Schools Workers' Compensation Group. Chairman Kavanaugh read and presented a Resolution on behalf of the agency to Ms. Baker.

Mr. Carpenter provided Ms. Baker a token of appreciation.

Ms. Dimas confirmed Commission meeting dates through July 2024.

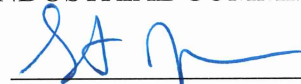
Public Comment.

There was no public comment.

The meeting was adjourned at 2:06 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By



Gaetano J. Testini, Executive Deputy Director

ATTEST:



Kara Dimas, Commission Secretary