

# UNITE HERE! Local 11

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December 6, 2023

Via E-Mail

Kris Mayes  
Arizona Attorney General  
2005 North Central Avenue  
Phoenix Arizona, 85004

## **Re: Employment Discrimination Complaint Against SSP America at Sky Harbor**

Dear Attorney General Mayes:

We write on behalf of UNITE HERE Local 11 to file a Charge of Discrimination with the Civil Rights Division of your office (hereafter the “Division”) concerning the conduct of SSP America at Sky Harbor International Airport (hereafter “SSP” or the “Company”).<sup>1</sup> Our Union represents SSP concessions workers at the airport. As described below, data obtained from SSP indicate substantial disparities in hiring, promotion, and compensation along racial and ethnic lines. We are also concerned that management has adopted a biased “tap-on-the-shoulder” approach to promotion, despite official policies to the contrary.

SSP America is one of two major food and retail concessionaires operating in Phoenix’s Sky Harbor Airport. A subcontractor with the City of Phoenix, SSP employs over 400 workers as cashiers, cooks, dishwashers, bartenders, servers, and baristas in well-known Sky Harbor establishments, such as Matt’s Big Breakfast, Dunkin’ Donuts, Four Peaks Brewing Co., Pei Wei, and Pita Jungle. Since 2014, UNITE HERE Local 11 and its predecessor local, Local 631, have served as the exclusive bargaining representative of SSP employees.

Below, we outline, in detail, grounds for the Division to investigate and redress SSP’s discriminatory employment practices pursuant to the Arizona Civil Rights Act. *See* A.R.S. § 41-1481(A)-(C).

### **I. FACTUAL ALLEGATIONS**

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<sup>1</sup> The Union additionally completed the “Civil Rights Complaint Form” on December 6, 2023: <https://www.azag.gov/complaints/civil-rights>.

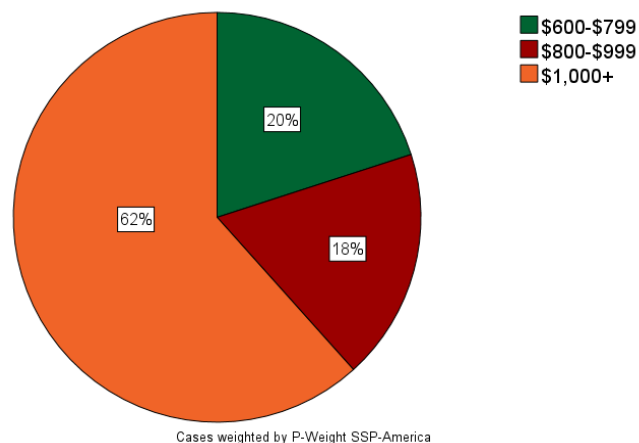
**A. SSP has paid African American/Black and Latino workers substantially less overall than white workers.<sup>2</sup>**

In 2023, SSP-America paid substantially more in compensation to white workers than to other racial/ethnic groups. According to a survey of non-managerial SSP workers conducted by the Grand Canyon Institute, a non-partisan think tank based in Phoenix,<sup>3</sup> African American/Black workers were paid, on average, 73% of the weekly earnings of white workers. Latino workers also faced disparities; on average, they were paid 78% of the weekly earnings of white workers.

Employees who are white are far more likely to report more than \$1,000 per week in gross earnings (inclusive of base wages and tips) while Latino and African American/Black employees are far more likely to report less than \$800 per week in gross earnings. The difference is particularly stark for African American/Black workers:

- 62% of white employees working more than 30 hours per week report taking home more than \$1,000 per week in gross earnings.
- 36% of Latino employees working more than 30 hours per week report taking home more than \$1,000 per week.
- 23% of African American employees working more than 30 hours per week report taking home more than \$1,000 per week.

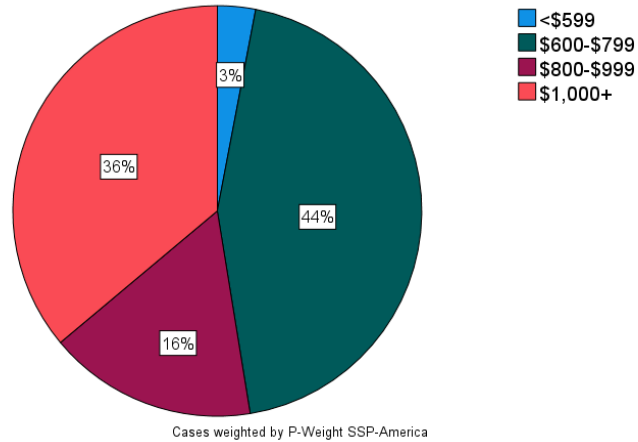
**NonHispanic White Employees Gross Earnings Per Week (Categories), 30+ hrs/wk**



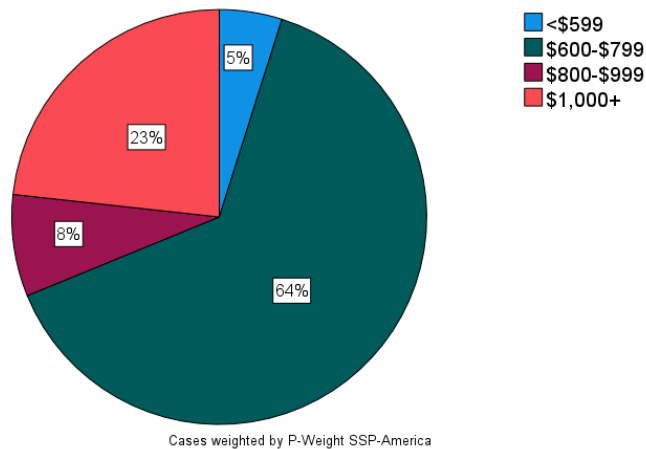
<sup>2</sup> In Summer 2023, the Worker Power Institute funded research to better understand the financial circumstances of food and beverage airport concession workers at Sky Harbor Airport. It contracted the Grand Canyon Institute to analyze survey findings and conduct interviews with a cross-section of survey respondents. In November 2023, the Grand Canyon Institute analyzed SSP-specific survey data, with findings summarized above. The Union is able to provide the underlying methodology upon request.

<sup>3</sup> <https://grandcanyoninstitute.org/about-us/>.

**Latino Employees Gross Earnings Per Week (Categories), 30+ hrs/wk**



**African-American Employees Gross Earnings Per Week (Categories), 30+ hrs/wk**



Put another way, Latino and African American/Black workers are much more likely to take home less than \$800 per week in gross earnings than their white counterparts:

- Only 20% of white employees working more than 30 hours per week report taking home less than \$800 per week in gross earnings.
- 47% of Latino employees working more than 30 hours per week report taking home less than \$800 per week in gross earnings.
- 69% of African American/Black employees working more than 30 hours per week report taking home less than \$800 per week in gross earnings.

The Grand Canyon Institute further found that African American/Black workers working more than 30 hours per week earn only 73% of the gross earnings of white employees, on average. Latino workers working over 30 hours per week earn only 78% of the earnings of white workers, on average.

Table 1: Average Weekly Earnings by Race/Ethnicity at SSP

	<b>African American/Black</b>	<b>Latino</b>	<b>White</b>
Average Weekly Earnings (>30 hours)	\$867 (73% of white workers)	\$926 (78% of white workers)	\$1190

**B. Racial disparities in compensation appear to be driven by dramatic overrepresentation of white workers in better paid, tipped positions, and a striking concentration of workers of color—particularly Black/African-American workers—in the lowest-paid jobs.<sup>4</sup>**

Among non-managerial employees, the sharp disparities in compensation along racial lines appear to result from the disproportionate representation of white workers in better-paid positions, and the disproportionate representation of workers of color in less well-paid positions.<sup>5</sup>

Table 2: Racial Composition of Non-Managerial SSP Workforce (August 2023)

<b>Total Workers</b>	<b>White</b>	<b>African American/ Black</b>	<b>Latinx</b>	<b>Native American/ Alaska Native</b>	<b>AAPI</b>	<b>Biracial</b>
457	153 (33%)	152 (33%)	119 (26%)	19 (4%)	4 (0.8%)	10 (2%)

Although people of color comprise 67% of the SSP non-managerial workforce, white employees are dramatically overrepresented within the bartender and server positions. These classifications are the best-paid non-managerial positions because these workers receive tips on top of their base pay.

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<sup>4</sup> All of the data discussed within this section was provided by SSP in response to the Union's information requests. Despite repeated Union requests, the Company has only provided cursory information on internal promotion and transfer policies, and has failed to provide any information on the Union's request for outside hiring information. Figures are based on the Union's most recent employee roster from August 2023.

<sup>5</sup> As background, SSP employs a greater number of African American/Black workers than other food preparation businesses in the Phoenix metro area. African American/Black workers comprise 33% of the non-managerial workforce for SSP, compared with just 5.7% of food preparation and serving related workers in the Phoenix metro area.

In particular, as of September 2023, white workers make up approximately 33% of the workforce for whom we have received race/ethnicity and compensation data from the Company, but comprise 81% of bartenders (the highest paid classification) and 68% of servers (the second highest paid classification). *See* Table 3 (below).

**Conversely, data from the Company in August indicate that SSP does not employ a single African American/Black bartender, despite the fact that African American/Black workers constitute 33% of the non-managerial workforce.** Similarly, only 11% of servers identify as African American/Black. Latino workers are also underrepresented in the highly compensated positions; despite making up 26% of the non-managerial workforce, Latino workers only hold 15% of bartender positions and 16% of server positions.

**On the whole, white workers are almost twelve times more likely than African American/Black workers to be a server or bartender. White employees are also four times more likely than Latino workers to be a server or bartender.** *See* Table 4.

Table 3: Racial Composition of SSP Bartenders and Servers (August 2023)

	<u>Bartenders</u>	<u>Servers</u>	<u>Non-Managerial Total</u>	<u>Percentage of Workers Holding Server / Bartender Position</u>
Total (#)	48	76	457	124
White	39 (81% of total)	52 (68%)	153 (33%)	91 (73%)
African American / Black	<b>0 (0%)</b>	8 (11%)	152 (33%)	8 (6%)
Latinx	7 (one individual identifies as white and Latino) (14.5%)	12 (16%)	119 (26%)	19 (15%)
Native American / Alaska Native	1 (identifies as Latino and Native) (2%)	4 (6%)	19 (4%)	5 (4%)
AAPI	0	0	4 (0.8%)	0 (0%)
Race Unknown	1 (2%)	0	10 (2%)	1 (1%)

Table 4: Likelihood of Employees Holding Server/Bartender Position (August 2023)

	<u>Employee Total</u>	<u>Bartenders</u>	<u>Servers</u>	<u>Percentage of Group Holding Server / Bartender Position<sup>6</sup></u>
White	153	39	52	91 (59%)
African American / Black	152	0	8	8 (5%)
Latinx	119	7	12	19 (16%)
Native American / Alaska Native	19	1	4	5 (26%)
AAPI	4	0	0	0
Race Unknown	10	1	0	1 (10%)
<b>Total</b>	457	48	76	

At the same time, workers of color are concentrated within the lowest-paid positions. Black/African American workers are 4.75 times more likely than white workers to work in the Utility department, which is a non-tipped position and has a starting hourly wage of \$18.20. Latino workers are twice as likely as white workers to be employed as utilities.

Table 5: Racial Composition of SSP Utilities (August 2023)

	<u>Utilities</u>	<u>Non-Managerial Total</u>	<u>Percentage of Group Holding Utility Position</u>
Total	51	457	
White	6 (12%)	153	4%
African American / Black	29 (57%)	152	19%

<sup>6</sup> This figure is derived by: (Bartenders for Racial Group + Servers from Racial Group) / Total Racial Group.

Latinx	10 (20%)	119	8%
Native American / Alaska Native	4 (8%)	19	Low sample size
AAPI	1 (2%)	4	Low sample size
Race Unknown	1 (2%)	10	Low sample size

**C. Workers have reported indications of a “tap-on-the-shoulder” approach to promotions.**

Multiple non-managerial employees have come forward to describe what they perceive as racially discriminatory treatment during SSP’s internal hiring and promotion process. Workers allege that while managers have harshly scrutinized and discouraged several African American/Black employees’ applications for promotion to server and bartender classifications, management has applied more lenient criteria in evaluating applications by white applicants, and has even gone out of its way to encourage white employees to apply. Such tap-on-the-shoulder practices have the potential to contribute significantly to the racialized employment disparities already discussed.

The accounts below serve to compare the alleged difference in treatment of African American/Black job applicants and their white counterparts.

1. Armadi Fard Allah, an African-American/Black employee, has been repeatedly denied opportunities for consideration for promotion to tipped classifications.

Almadi Fard Allah (“Ark” for short), an African-American/Black employee, has repeatedly sought to be promoted to either of the tipped classifications since beginning work for SSP in December 2021. Ark had worked in food service as a barback and runner prior to his employment with SSP and had in his own time obtained an alcohol serving and food handler’s license from the State of Arizona. Ark had also previously worked as a bartender and server at the Biltmore Phoenix Hotel and thus had prior bartending and serving experience.

Ark was eager to find opportunities for promotion into the higher-paid tipped classifications and regularly inquired into such opportunities with management. Managers, however, were consistently discouraging. Manager Sean Cortez, for example, told Ark that he would need at least a year of continuous seniority with the Company before he could be considered for a server position, and that only after becoming a server could he be considered for promotion to bartender. Cortez and fellow manager Jennifer Rind both said that Ark would have to be familiar with every brand of alcohol and liquor offered by SSP at its Sky Harbor locations.

To learn this, Rind recommended that Ark go to SSP's other Sky Harbor restaurants during his spare time and ask the bartenders there to train him. Ark is unclear on how an SSP employee would go about doing as Rind recommended and has never heard of another employee being trained by bartenders in this way in hopes of a promotion.

Sometime around mid-October of 2023, an opening for the bartending position was posted on "Hot Schedules"—the Company's internal job posting platform. After learning about the posting, on October 19, 2023, Ark approached Director of Airport Operations Aaron Esenberg while at work and asked him about the opening for the bartender position. Ark mentioned to Esenberg that he had bartending experience and an alcohol safety license and asked if he could be considered for the position. Esenberg said that he could not be considered, saying that Company policy was to only hire in-house servers to be bartenders and only out-of-house if the person had five years of experience as a bartender. Ark then asked if there were any alcohol or liquor tests for becoming a bartender or server, to which Esenberg said that there was not.

Despite Esenberg's discouraging response, Ark responded to the Hot Schedules posting asking to be considered for the bartending position in late October 2023. Management never responded to Ark's request. As of mid-November 2023, two new bartenders from outside the bargaining unit and lacking any prior experience with the Company began their employment with SSP at Sky Harbor restaurants after Ark's response to the job posting: Layla Black and Scott Fischer. Both individuals are white.

By hiring external candidates for employment without consideration of applications by existing employees, the Company violated the express language of the Company's own collective bargaining agreement, which obligates the Company to seek to hire candidates from within the bargaining unit based on seniority before considering outside applicants.<sup>7</sup> Rather than hire Ark, a qualified, African-American/Black candidate from within the unit, SSP chose to go out of its way to hire others in violation of its contractual commitments.

2. Jasmine Glass, another African-American/Black employee, applied for promotion to the server classification and was qualified but quickly eliminated from consideration.

Jasmine Glass, another African-American employee, has worked as a cashier for SSP for a total of around three and a half years, having worked continuously for the Company since November 2022. Jasmine sports substantial serving experience from other jobs, having worked as a server at Applebees, the Canopy Hotel in Tempe, and the Escape and Centurion Lounges operated by Mag USA at Sky Harbor Airport.

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<sup>7</sup> See CBA § 7.4 "Job Posting and Bidding."



Drawing on Jasmine's substantial experience, management has on multiple occasions requested that Jasmine fill in for servers at SSP-operated establishments. On Super Bowl Sunday in February 2023, SSP Manager Jennifer Rind approached Jasmine to ask if she could work that night as a substitute server at Phoenix Beer Company, an SSP-operated restaurant in the airport. There, Jasmine received training from a colleague and full-time server, Devon Perez, and waited on several tables that night. On April 25, 2023, as well, Manager Sean Cortez recruited Jasmine to fill in for missing servers at Phoenix Beer Company. Eager to help out, Jasmine arrived early that morning and served for the entire day, waiting on what she estimated to have been around 20 tables.

In May of 2023, SSP published on Hot Schedules that the Company would be holding interviews for new openings in the server and bartender classifications at the Airport. Jasmine was interested in applying for the server position and reached out to Manager Cortez about applying. Cortez said that he would think about scheduling an interview, but Jasmine heard nothing back.

After concluding that Cortez had not submitted her request for an interview with the Company's Operations Department, Jasmine decided to attend one of the walk-in interviews then taking place for the server position. At the start of the interview—led by Operations Managers Linda Wells and Donald Erke—Jasmine was promptly told that she was disqualified for having call-outs within the past three months. Nonetheless, Wells and Erke began to quiz Jasmine on the types and brands of the various alcoholic beverages served at SSP Sky Harbor locations. After testing Jasmine on several drinks, Wells stated that it appeared that Jasmine did not know enough to be promoted anyway, as she would need to know all of the wines and liquor brands served in the airport to be considered qualified. Jasmine asked to confirm if this was indeed a requirement, which Wells affirmed, saying that she recommended talking to SSP bartenders and servers in order to learn the brands and reapply at a later date.

3. Brenton Volkert, a similarly situated white employee, was approached about promotional opportunities and summarily offered a server position based on less stringent criteria.

Ark's and Jasmine's experiences contrast sharply with that of Brenton Volkert, a white SSP employee, who applied for promotion at around the same time. Like Ark and Jasmine, Brenton began work for SSP as a cashier, beginning in February of 2021. Unlike Jasmine or Ark, Brenton had no prior experience with bartending or serving, although he had previously worked in food service as a runner and later barback at other non-SSP restaurants and had received a liquor handling license from the State of Arizona. Brenton was eager for opportunities for promotion to a tipped classification and volunteered to work the Super Bowl as a server, just as Jasmine did.

Around February of 2022, after just one year on the job, Brenton saw a posting on Hot Schedules for bids into the server and bartender classifications and considered applying. Soon after Brenton saw the posting, Operations Manager Wells approached Brenton while he was at work and asked if he had seen the bids and planned on applying, to which he said he had. Brenton then applied shortly thereafter.

Brenton interviewed to become an SSP server with Director of Airport Operations Aaron Esenberg in the Human Resources Office in February of 2022. Recalling the interview, Brenton remembers that Esenberg posed to him a series of hypothetical job scenarios and asked for Brenton's intuition on how he would handle each. According to Brenton, Esenberg did not ask Brenton any questions about his attendance at work or quiz him on the alcoholic beverage options or brands at Company restaurants. After running through the hypotheticals, Esenberg said that Brenton got the job and stated that he would start work as a server the next day.

Thus, whereas Jasmine and Ark—two similarly situated African-American/Black applicants—were both discouraged from seeking promotional opportunities within SSP, Brenton was actively approached by management to confirm his knowledge of the application opening. When he applied, Brenton was subject to an entirely different, more lenient set of interview questions than was Jasmine, or than were represented to Ark. Brenton's application experience thus differed starkly from what had repeatedly been held out to the two Black applicants as SSP's standard application requirements. These cases alone demonstrate troublingly disparate hiring and promotion practices by the Company in violation of state and federal civil rights law.

4. By its own admission, SSP maintains no clear set of objective criteria for evaluating candidates for hire or promotion.

As the instances discussed above illustrate, SSP's job application standards have been inconsistent. In an effort to better understand the Company's criteria in evaluating candidates for promotion, the Union on October 30, 2023 requested information from the Company on its hiring, transfer, and promotion practices, including any criteria SSP uses to assess job applicants.

In SSP's response to the Union on November 20, the Company stated that it uses no pre-prepared questions, applicant scoring, or point system to evaluate candidates for promotion from within the workforce, nor any prepared or standardized questions for interviewing internal candidates. The only promotion requirements provided, derived from the Company's internal policy handbook, were that candidates for promotion or transfer be "in good standing" and have over six months of employment. The handbook further states that "[p]romotions and transfers are based on qualifications, such as job knowledge, experience, quantity and quality of work, interest, skills, education (as appropriate), and length of service." Beyond this list of vague,

subjective factors, the Company appears to have no set of guidelines or standardized procedures for appraising internal job candidates.<sup>8</sup>

## **II. ANALYSIS**

### **A. The evidence supports a potential claim for disparate treatment**

The Arizona Supreme Court has long recognized federal Title VII case law as persuasive when interpreting the Arizona Civil Rights Act (“ACRA”). *See, e.g., Higdon v. Evergreen Intern. Airlines, Inc.*, 138 Ariz. 163, 165 n.3 (1983) (en banc); *Arizona Civil Rights Div. v. Olson*, 132 Ariz. 20, 25 (1982).

Under Title VII, 42 U.S.C. § 2000e et seq., to show pattern or practice of disparate treatment, a plaintiff must “carry the initial burden of offering evidence adequate to create an inference that” employment decisions were “based on a discriminatory criterion illegal under the Act.” *International Broth. Teamsters v. U.S.*, 431 U.S. 324, 358 (1977). “Where gross statistical disparities can be shown, they alone may in a proper case constitute prima facie proof.” *Hazelwood School Dist. v. U.S.*, 433 U.S. 299, 307–308 (1977) (citing *Teamsters*, 431 U.S. at 339). This burden-shifting framework has been adopted by Arizona courts to apply identically to claims under ACRA. *See Cisneros v. Sears, Roebuck & Co.*, 135 Ariz. 301, 302 (Ct. App. 1982) (citing *Teamsters* to apply Title VII’s burden-shifting framework by inference to ACRA).

Gross statistical disparities in earnings, hiring, and promotion at SSP merit an investigation by the Division into the possibility of disparate treatment. As described above, white workers are overrepresented within higher-paid, non-managerial roles. Although under a third of non-managerial SSP employees are white, white employees occupy 73% of the workforce’s highest-paid classifications of server and bartender—68% and 81%, respectively. By comparison, data from the Company show that African-American/Black employees, who compose a nearly identical 33% of the total workforce, hold just 5% of active server positions and 0% of all bartending jobs.

Conversely, workers of color are highly concentrated within the lowest-earning classifications at SSP. African-American/Black employees in particular appear to be relegated to the least lucrative or desirable jobs; African-American/Black workers occupy a full 57% of all utility positions, for example, a non-tipped classification with a starting hourly wage of just \$18.20. Overall, African-American/Black employees are 4.75 times more likely than whites to hold a utility position, while Latino workers are about twice as likely as whites to do so.

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<sup>8</sup> The Union also requested information on Company practices with regard to hiring and recruitment from outside the bargaining unit. To date, the Company has failed to respond or provide this information to the Union.

The overrepresentation of white workers in better-paid positions in turn produces large differentials in compensation: among workers working more than 30 hours per week in 2023, Black/African-American non-managerial workers received, on average, 73% of the weekly earnings of white workers, resulting in approximately ***\$16,841.31 less in annual pay on average***. Similarly, the average Latino worker made just 78% of the weekly earnings of the average white worker, equal to a ***\$13,742.54 difference in pay annually***. See Table 1.

These differences cannot be easily explained by a lack of qualifications or a lack of interest among workers of color. The food service bartending/serving positions at SSP entail the sorts of skills that “many persons possess or can fairly readily acquire.” *Hazelwood School Dist.*, 433 U.S. at 308 n.13 (observing that general labor market statistics may prove probative in these instances).<sup>9</sup> Moreover, SSP appears to have screened out African American/Black employees that possessed substantial prior work experience in the positions they sought. One of the two employees discussed here, Ark, had even obtained official licensing from the State of Arizona to work in bartending, while the other, Jasmine, had been repeatedly asked to work as a server by SSP management, only to be denied the actual position. Moreover, despite policies enshrined in SSP’s collective bargaining agreement (CBA) providing for preferential consideration for internal hires, workers of color have also reported being passed over in favor of white and/or lighter-skinned applicants from outside the bargaining unit.<sup>10</sup>

#### **B. The evidence also supports a potential claim for disparate impact.**

Should the Division determine, after investigation, that the disparate treatment described above is insufficient to support an inference of intentional discrimination, the Division may also proceed under a disparate impact theory. To establish a prima facie case of disparate impact under the Arizona Civil Rights Act, a plaintiff is ordinarily required to (1) identify the specific employment practice that is allegedly responsible for statistical disparities and (2) “raise an inference of causation” through statistical evidence tending to point to the practice’s disparate impact. *Cota v. Tucson Police Dep’t*, 783 F. Supp. 458, 473 (D. Ariz. 1992). As with disparate treatment, courts analyze disparate impact claims under ACRA identically to those brought under Title VII. See *id.* at 472-73; *Cisneros*, 135 Ariz. at 302 (stating that Title VII’s disparate impact theory applies “by inference” to ACRA claims, as well).

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<sup>9</sup> Compare *Ward’s Cove Packing Co. v. Atonio*, 490 U.S. 642, 651 (1989) (stating that liability will not obtain where “the absence of minorities holding such skilled positions is due to a dearth of qualified nonwhite applicants (for reasons that are not petitioners’ fault)”).

<sup>10</sup> These allegations would be sufficient to establish a prima facie case of individual disparate treatment. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (stating that a plaintiff must show that (1) he belongs to a statutorily protected class, (2) he applied for and was qualified for an available position, (3) he was rejected despite his qualifications, and (4) after the rejection, the position remained available and the employer continued to review applicants possessing comparable qualifications). “The burden of establishing a prima facie case of disparate treatment is not onerous.” *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

For disparate impact claims, courts have not required plaintiffs to isolate specific aspects of employers' promotional systems where, as here, the company relies upon subjective criteria, lacks uniform standards, and fails to draft written policies or justifications for promotional decisions. *See Stender*, 803 F.Supp. at 335 (citing *Allen v. Seidman*, 881 F.2d 375, 381 (7th Cir. 1989)).<sup>11</sup> Employers have also been held liable for disparate impacts arising from a policy of “leaving initial placement, promotion and training decisions to the sole discretion of lower-level supervisors whose conscious and subconscious prejudices are unchecked by objective and publicized decision making criteria.” *Id.*<sup>12</sup>

By its own admission, SSP lacks any consistent set of standards with which it evaluates candidates for employment. The Company uses no pre-prepared interview questions, applicant scoring, or points system to assess candidates. The only application standards provided by the Company are a list of holistic “qualifications,” such as experience, quality of work, interests, skills, and “education (as appropriate),” with no grounding in objective criteria. The result is that SSP appears to rely heavily upon a system of subjective decision-making. White applicants such as Brenton report being actively approached by managers to give notice of potential job openings, and receiving relaxed, soft-ball interviews after applying. But when qualified workers of color have sought promotion, they allege that they have faced discouraging responses from management and additional, unwritten job requirements, including the unrealistic expectation that applicants have prior knowledge of every wine and liquor sold by SSP. Employees further describe instances where managers diverged from the official processes outlined in the CBA to bring on white and/or lighter-skinned employees rather than consider their own applications. These experiences indicate that the Company’s promotion policy is characterized by informality and cannot be readily separated into different elements.

SSP’s selection and promotion methods have contributed to significant racial disparities. As described above, there are large differences in representation among higher-paid bargaining unit positions, and these discrepancies cannot be readily explained through a lack of qualifications among lower-level employees of color. Further investigation is needed concerning the root cause of these inequalities.

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<sup>11</sup> Compare *Stout v. Potter*, 276 F.3d 1118, 1124 (9th Cir. 2002) (stating that a promotion process that included screening panels, supervisor evaluations, validated competences, and meetings to compare evaluations could be analyzed as several discrete elements).

<sup>12</sup> This principle is not disturbed by *Wal-Mart Stores v. Dukes*, a decision rendered two decades after the passage of the Arizona Civil Rights Act, which focused on standards for class certification. 564 U.S. 338, 355 (2011). There, the Supreme Court reiterated that “in appropriate cases ... giving discretion to lower-level supervisors can be the basis of Title VII liability under a disparate-impact theory—since “an employer's undisciplined system of subjective decisionmaking [can have] precisely the same effects as a system pervaded by impermissible intentional discrimination.” *Id.* (internal punctuation omitted).

### III. CONCLUSION

For the reasons outlined above, we request that the Division initiate a systemic investigation into the pay, hiring, and promotion practices of SSP at Sky Harbor International Airport, including questions of legal compliance and best practices. We are continuing to investigate these issues and are prepared to assist the Division in this process by making workers available to speak with the agency's investigators. Please do not hesitate to reach UNITE HERE Local 11 General Counsel Jeremy Blasi by phone at (202) 251-0048 or by email at [jblasi@unitehere11.org](mailto:jblasi@unitehere11.org). We look forward to hearing from you.

Sincerely,

/s/

Maxwell Ulin, Legal Fellow  
UNITE HERE Local 11

/s/

Alyssa Peterson, Staff Attorney  
UNITE HERE Local 11

/s/

Jeremy Blasi, General Counsel  
UNITE HERE Local 11