

MINUTES OF THE MEETING OF
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library
25 East Shelbourne Avenue
Las Vegas, Nevada
Commencing at 10:00 o'clock a.m.

April 13, 2017

PRESENT

James Barnes (public)
Nicole Baker (labor)
Steve Ingersoll (labor)
Sandra Roche (management)
Rodd Weber (management)
Fred Scarpello, Esq., Legal Counsel

ABSENT

Frank Milligan (alternate-public)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., April 13, 2017. The notice of meeting was duly provided under Chapter 618 of the Nevada Revised Statutes (NRS), Chapter 618 of the Nevada Administrative Code (NAC) and NRS Chapter 241 of the Nevada Open Meeting Law. A copy of the notice is attached to these minutes and made a part hereof as though fully set forth herein.

The Chairman announced the contested hearing calendar and identified the cases set for hearing on the published public agenda notice. The Chairman noted settlements in three of the scheduled cases, namely docket LV 17-1876, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Nexus Steel, LLC, docket LV 17-1874, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders and docket LV 17-1877, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders. Chairman Barnes further noted the matters would be included on the weekly status report and diaried for receipt of settlement documentation in accordance with the Board rules, practice and approve review "for possible action" at the next public meeting.

The Chairman called the Board to order for hearing of the remaining case on the contested calendar, namely docket LV 17-1879, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. DLP Services, LLC. The Chairman noted the appearance of Division legal counsel, Ms. Salli Ortiz on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. Greg Carlson, Esq. on behalf of respondent, DLP Services, LLC.

Documentary evidence and testimony were presented in the course of the hearing. The case was adjourned for a luncheon break at 12:40 p.m. The Board reconvened the hearing approximately 1:40 p.m. Witness testimony continued. After closing arguments by counsel, the matter was concluded and submitted.

The Board commenced deliberation of the submitted case, namely docket LV 17-1879, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. DLP Services, LLC.

After study of the hearing notes, pleadings, exhibits, deliberation and review of the applicable case law, a question for the vote was called. The Board reached a decision subject to drafting, edits and final review for approval as follows:

On motion, second and unanimous vote, the Board members present found violations by a preponderance of evidence as to Citation 1, Item 1, Item 2 and Item 3. The Board confirmed the classifications and approved the penalties in amount of \$2,800.00 for each of the citations as proposed in a total penalty amount of \$8,400.00.

The Board directed counsel to prepare, draft and circulate the proposed decision for review, comment and edit prior to final issuance.

The Chairman and Board reviewed the remaining matters on the published meeting agenda after confirming the contested hearing portion of the calendar agenda had been completed. The Chairman referenced the agenda, and first called for approval of the previous Board minutes of March 8, 2017 as distributed. On motion, second and unanimous vote Board members present approved the previous minutes as distributed.

The weekly status report of pending matters was reviewed. The Chairman referenced all matters at item 4(c) "for possible action"

involving case settlement documentation submitted for Board review and approval. The Chairman confirmed that all Board members had received, prior to the meeting, memoranda and the settlement documentation as submitted for consideration and approval. The Chairman further noted based upon advisories of counsel that no Board members had raised any objections prior to the meeting. The Chairman requested Board members to vote on the matter or register any objections for discussion and debate accordingly. There being no objections, on motion of Board member Ingersoll, second by Board member Roche, the following dockets were approved by unanimous vote for settlement and issuance of final orders:

- 1) LV 17-1878, TRE Builders, LLC
- 2) RNO 17-1868, Dollar Tree Stores, Inc.
- 3) LV 17-1873, Eberhard Southwest Roofing
- 4) LV 17-1884, Lone Mountain Excavation

Counsel was directed to forward the Final Order to the Chairman for signature and return for effectuating service on all parties. The matters would then be relegated to a closed status and carried on the status report for 30 days.

Counsel provided an updated report on continued efforts to locate alternate hearing rooms with video capabilities that offer a more convenient and formal setting for conduct of Board meetings and hearings. Counsel referenced the various rooms subject of previous inquiries but removed from consideration due to inability to assure confirmed advance reservations. Counsel noted the Sawyer Building and information received on the limitations on the two potential hearing rooms as being effectively considered "proprietary" by the Gaming Control Board and Legislative Counsel Bureau. Both retain a written option of short term cancellations should there be a requirement for use by the controlling agencies.

Counsel reviewed the new Business and Industry facility located at 3300 West Sahara in Las Vegas. The building includes three hearing rooms for possible use by the Board, two of which are equipped with some limited video capability. Counsel described both hearing rooms and provided photos. It was noted that notwithstanding the early reportings of "formal hearing room" configuration, they were all basically meeting rooms which included tables and chairs. The Nevada Room appeared to be the most useable, however similarly configured as the Enterprise Library, e.g. no dias or other formalities like those located in the Gaming Control board hearing room. Ms. Carrie Foley, the responsible person in charge of the reservations for the BI building advised the following:

- 1) Arrangement of the room furniture is up to the user. Tables and chairs located in the room need to be set up by the Board the day of the meeting and returned as found prior to departure.
- 2) Time 8:00 a.m. to 5:00 p.m. (Must be out of the building by 5:00 p.m.)
- 3) Video feed - normally to another government site, but can send anywhere as long as you give them the IP address. Also that would have to be tested the day before to be sure it is working.
- 4) Microphones are available in the rooms.
- 5) Advanced reservations can be made with assurances of no "last minute" cancellation.

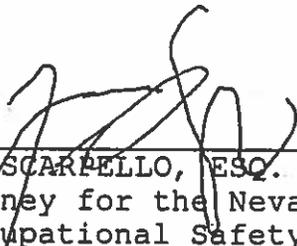
Board members commented the new building (BI) meeting room configurations (no formal dias) and conditions were not as previously understood. None provide video availability for members of the general public or for those specifically interested in OSHA, e.g. management/labor safety representatives or organizations, employers, employees, etc. to conveniently "tune in" and observe the appellate proceedings. Rather the rooms are generally equipped to connect a video feed to the Department or Division state office(s).

Board members present expressed continued preference for the neutral public (non labor/management/enforcement agency affiliated) hearing room at the Enterprise Library, noting it has sufficiently accommodated the Board needs over many years. Notably, the video capability at the new BI building does not provide a benefit to the public at large who may have an interest or involvement in Nevada employer contested cases appealed to the Review Board. There appeared no Board or public benefit in a change from the Enterprise building to the BI facility. Additional comments noted the proximity and ease of transportation to and from the Enterprise Library and airport as well as security on the premises.

Further to the foregoing, DIR has made no recommendations or references for any video equipped facility use in Reno. The only facilities suggested are in Carson City. However the vast majority of northern Nevada cases before the Board emanate from citations issued in the City of Reno/Washoe County. Comments were made as to inconvenience for the litigating parties and Board members for travel to Carson City. For example, Las Vegas members arriving on the morning airplane would require transportation and additional time allocations for the drive to and from Carson City. Further, it would be burdensome for members of the public, cited employers, employee representatives, and witnesses to incur the additional time to attend hearings/meetings in Carson City.

The Board members instructed counsel to continue use of the Enterprise Library hearing room in Las Vegas as already reserved through the end of 2017. Counsel was authorized to explore additional options for hearing room facilities commencing January 2018 for further Board review and discussions.

There being no further business, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 4:00 p.m.



FRED SCARFELLO, ESQ.
Attorney for the Nevada
Occupational Safety and
Health Review Board