

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.

March 8, 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., March 8, 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 called the Board to order and announced the contested hearing calendar and identified the cases set for hearing on the published public agenda notice. The Chairman noted settlements in two of the scheduled cases, namely docket LV 17-1873, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Eberhard Southwest Roofing and docket LV 17-1875, Riverside Resort and Casino. 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 review "for possible action" at the next public meeting.

The Chairman announced that docket LV 17-1874, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders, had been postponed and reset for hearing on the April 13, 2017 contested docket calendar based upon respondent counsel schedule conflicts. The Chairman further noted postponement due to

a medical emergency in docket LV 17-1862, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Gilmore Construction; and that the hearing would be reset on the June 14, 2017 contested hearing calendar.

The Chairman and Board reviewed the remaining matters on the published meeting agenda after confirming that all contested matters had been postponed, continued, resolved or as noted hereinabove:

A. The Board approved the previous Board meeting minutes of December 14, 2017 as distributed on motion, second and unanimous vote of all members present.

B. The scheduled hearings on pending cases, the contested docket and status report were reviewed and subject of discussion. Chairman Barnes noted contested cases are now scheduled through June 2017 and would soon include July given the number of cases currently filed. The majority of contested cases involve citations in southern Nevada for the Las Vegas venue. Review Board member discussed scheduling and date availabilities to assure a quorum for the hearing/meeting dates currently set. The Board also reviewed meeting room options in other public facility locations.

(i) Board members reviewed a DIR directive that all Boards and Commissions within the Division comport with a standardized format for all meeting and hearing notifications posted and published on the state website. Members discussed the areas recommended for changes and reviewed NRS and NAC at chapter 618 with regard to the Review Board, as well as Chapters 233B and 241 (Nevada Open Meeting Law). Counsel and Board members exchanged comments and questions as to the applicability of the model format, noting the OSHA Review Board has only specific and limited statutory jurisdiction restricting it to the adjudication of contested cases emanating from citations issued by OSHEs under the Nevada Occupational Safety and Health Act. Counsel noted that no public comment may be made or exchanged on any matter pending with the Board nor which may come before the Board through a contested complaint. Further, no action can be taken on any public comments given jurisdictional authority limited to only adjudication of contested cases resulting from formal complaints filed by OSHEs. It was noted the addition of a public comment section on the agenda for the specialized Review Board could result in "hard feelings" by the public if invited to comment but then informed it is not allowed nor any action available through the Board due to the limited jurisdiction.

Counsel advised that some additions could be made to the published notice and agenda on the "public comment" issue to endeavor compliance with the DIR directive provided it is

sufficiently explained to avoid misleading the public. For example, the Board could include a public comment item on the agenda, but add specific expanded information on the legal limitations of the Board.

The Board discussed additional recommendations in the DIR correspondence. Counsel noted that while most are beyond the strict legal requirements of NRS 618, NAC 618, 233B and 241, the substance requested can be effectuated to some degree to accommodate the directive. Counsel was instructed to revise the Board notice format in accordance with Board comments, discussions and the model, then forward same to the Board and Administrator for comment. If none are received the revised notices can be implemented.

The Board discussed additional recommendations for utilization of hearing room facilities equipped with "video feed" capabilities. It was noted that any potential hearing room facilities must maintain a written policy permitting advance room reservations and no short notice cancellation provisions. Members noted the requirement to post and publish notices as well as advance formal hearing settings for the litigating parties, requires assurance of a reserved room forum.

(ii) Counsel was instructed to continue setting matters and "stacking" contested cases in accordance with previous practice to assure contested matters are efficiently timely adjudicated by the Board.

C. Contested case settlements pending were reviewed and discussed by Board members. Board counsel noted that all of the settlement materials, including the original hearing packets regarding same, had been previously forwarded on to Board members for study in advance of the formal meeting. No Board member expressed objection over the settlement terms/documentation noting the pleadings and cover memorandum from counsel which demonstrated threshold compliance with the Board rules and policy regarding case resolutions. The Board on motion, second and unanimous vote as to each of the dockets identified at item C on the agenda were approved and the settlements subject to issuance of Final Orders. Board counsel advised the Final Orders would be forwarded on to the Chairman for signature and return for service on the parties to effectuate conclusion of the subject cases. The matters would continue on the status report for approximately 30 days and then be relegated to closed status.

D. General administration and procedural issues were discussed and reference was made to subsection B regarding same.

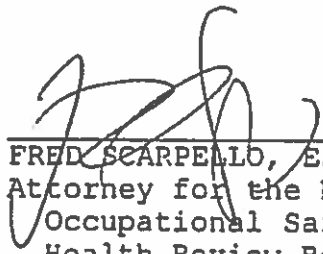
(i) Counsel advised the Performance Builder fatality case,

docket LV 17-1877 to be heard on the April docket may result in a larger public attendance than usual. Counsel noted the previously discussed issues on hearing room facilities including efforts to obtain larger accommodations, those that could permit commencement at 9:00 rather than 10:00, a confirmed reservation policy and video feed capabilities.

The Board referred back to item B(i) (above). Counsel reiterated that inspection of the Sawyer Building hearing rooms for availability and suitability would be conducted and members updated with information as to same. Members recognized the potential of added attendees on the fatality case, but agreed that if no larger room with video feed capabilities could be located and confirmed for the April 13 hearing date, the Performance Builders cases, dockets LV 17-1877 and LV 17-1874, would remain formally noticed to be heard as priority settings at the currently reserved Enterprise Library location. Members acknowledged that previous fatality cases subject of press or public interest with potential numerous attendees had never actually materialized to the extent of creating any difficulty with accommodations. Counsel noted the scheduled Enterprise hearing room has accommodation capabilities for approximately 30 individuals and hopefully meet the needs of a greater than usual number of attendees.

E. Board members were reminded to promptly inform counsel in advance of the next agenda posting requirements for any particular matters that might require final action or formal notice of action during the public meeting.

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 11:00 a.m.



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