

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.

Wednesday, July 12, 2017

Thursday, July 13, 2017

PRESENT

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

PRESENT

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

ABSENT

Steve Ingersoll (labor)
Frank Milligan (alternate public)

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Wednesday, July 12, 2017

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the Review Board at 10:00 o'clock a.m., Wednesday, July 12, 2017. The notice of meeting was duly provided to all parties and posted pursuant to Chapter 618 of the Nevada Revised Statutes and in accordance with 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 confirmed a lawful quorum of members present.

The Chairman announced the contested hearing calendar and identified the cases scheduled for hearing on the published public agenda notice. The Chairman noted an advisory of settlement in docket no. LV 17-1888, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Westcorp Management Group One. Chairman Barnes instructed the identified case be included on the weekly status report and diaried for receipt of settlement documentation for approval review in accordance with the NAC 618 and Board rules. The case will be entered on the public agenda and listed "for possible action."

The Chairman called the Board to order for hearing of the first contested matter, namely docket LV 17-1872, Accelerated

Construction, Inc. He recognized the appearance of division legal counsel, Ms. Salli Ortiz, Esq. 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. Brian Watkins, Esq. on behalf of respondent, Accelerated Construction, Inc.

Documentary evidence, witness testimony and closing arguments were presented during the course of the hearing. The presentation was concluded and the case submitted at approximately 1:45 p.m.

After a luncheon recess, the Chairman announced commencement of the second scheduled hearing, docket LV 17-1902, Harber Company, Inc., dba Mountain Cascade of Nevada. Chairman Barnes recognized the appearance of division legal counsel, Ms. Salli Ortiz, Esq. 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. Robert Peterson, Esq. on behalf of respondent, Harber Company, Inc.

Documentary evidence, witness testimony and closing arguments were presented during the course of the hearing. The presentation was concluded and the case submitted at approximately 4:30 p.m.

The Chairman announced the expiration of the published meeting time and recommended conclusion for the day and reopening as scheduled on Thursday for consideration of the remaining matters on the published agenda commencing with the matters listed for possible action. The Chairman further announced the Board will reconvene as duly scheduled on Thursday, July 13, 2017 at 10:00 a.m. for hearing of the remaining contested matter on the agenda, LV 17-1889, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jetstream Construction. Additionally the Board will conduct the administrative meeting and address remaining Board business subject of the published administrative agenda. Chairman Barnes also announced deliberations will be conducted on all pending cases including those heard Wednesday and Thursday and listed "for possible action" time parameters permitting. On motion, second and unanimous vote, the meeting was adjourned at approximately 5:00 p.m.

Thursday, July 13, 2017

The Chairman convened the scheduled meeting of the Nevada Occupational Safety and Health Review Board at approximately 10:00 a.m. on Thursday, 13, 2017. The Chairman announced the remaining

matter on the contested hearing agenda identified as docket LV 17-1889, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jetstream Construction. The Chairman recognized the appearance of division legal counsel, Ms. Salli Ortiz, Esq. 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. Troy McKnight, Esq. on behalf of plaintiff, Jetstream Construction.

Documentary evidence, witness testimony and closing arguments were presented during the course of the hearing. The presentation was concluded and the case submitted at approximately 12:25 p.m.

After a brief recess, the Chairman reconvened the Board at 12:30 p.m. The Board commenced deliberations on the cases previously heard. The Chairman called for discussion and deliberation of docket LV 17-1889, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Jetstream Construction. The members reviewed and discussed the pleadings, exhibits, hearing notes and applicable case law. After referencing the cited standards, and elements required for finding a violation under the established burden of proof, they discussed the facts and testimony. After study of the hearing notes, pleadings, exhibits and extended deliberations, a final question for the vote was called. The Board reached a decision subject of drafting, edits, additional legal research and final review as follows:

On motion, second and unanimous vote the Board members present confirmed the cited violation at Citation 1, Item 1, 29 CFR 1926.501(b)(4)(i) as well as the Serious classification and proposed penalty in the amount of \$800.00.

On motion, second and unanimous vote the Board members present dismissed the citation for a violation at Citation 1, Item 2, 29 CFR 1926.501(b)(14) and denied the classification and proposed penalty.

On motion, second and unanimous vote the Board members dismissed the citation for a violation at Citation 2, Item 1, of 29 CFR 1926.403(b)(2) as well as the classification and denied the proposed penalty.

The Chairman directed counsel to prepare, draft and circulate the proposed decision for study, comment, edits and review prior to final issuance.

The Chairman called for discussion and deliberation as to docket LV 17-1902, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Harber Company, Inc., dba Mountain Cascade of Nevada. After study of the hearing notes, pleadings, exhibits and extended deliberations, a final question fo the vote was called. The Board reached a decision subject of drafting, edits, additional legal research and final review as follows:

On motion, second and unanimous vote, Board members present confirmed the Citation 2, Item 1, for violation of 29 CFR 1926.652(a)(1) or in the alternative, 29 CFR 1926.652(b)(2), as well as the Serious classification and proposed penalty in the amount of \$1,200.00.

Board members acknowledged and confirmed the Citation 1, Item 1, citation for violation of NRS 618.987 (2), based on the respondent withdrawal of contest. The violation, Repeat/Other classification and proposed penalty of \$1,000.00 are confirmed.

The Chairman directed counsel to prepare, draft and circulate a proposed decision for study, comment, edits and review prior to final issuance.

The Chairman called for discussion and deliberation as to docket LV 17-1872, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Accelerated Construction, Inc. After study of the hearing notes, pleadings, exhibits and extended deliberations, a final question fo the vote was called. Board members expressed concerns with regard to the proposed penalties. All agreed to first deliberate the proof of violations; and bifurcate consideration on the penalties for a secondary vote.

On motion, second and unanimous vote, the Board members present confirmed a violation at Citation 1, Item 1, of 29 CFR 1926.451(b)(1), and confirmed the classification of Serious.

On motion, second and unanimous vote, the Board members present confirmed a violation at Citation 1, Item 2, of 29 CFR 1910.451(f)(3), and confirmed the classification of Serious.

On motion, second and unanimous vote, the Board members present confirmed a violation at Citation 1, Item 3, of

29 CFR 1926.451(q) (1), and confirmed the classification of Serious.

On motion, second and unanimous vote, the Board members present confirmed a violation at Citation 1, Item 4, of 29 CFR 1926.454(a), and confirmed the classification of Serious.

The Board continued discussions and deliberations. Members agreed there appeared to be a duplication of charges at Citation 1, Items 1 and 3. The Board discussed the distinction of the allegations and applicability of the standards cited. Members concluded the citations were sufficiently separate, but very close to a duplication creating the appearance of excessive penalties and unfairness.

Board members continued deliberations regarding the proposed penalties. After referencing Exhibit 1, members discussed the lack of accurate or persuasive supporting rationale for some of the penalty calculations. The Board noted insufficient consideration/recognition for credits. Further, although not a legally required factor, but potentially available to an employer, "quick fix" reductions should have been fairly explored. Additionally, there was no credit for good history although the company a first time OSHA offender. The worksheet did not reflect full consideration of the jobsite conditions and variables subject of testimony and evidence at hearing. On motion, second and unanimous vote, the Board voted to "group" the penalties for the four items listed under Citation 1, on a gross basis by allocating a reduction to each item thereby reducing the proposed penalties of \$4,200.00 to the total sum of \$1,200.00.

The Chairman directed counsel to prepare, draft and circulate a proposed decision for study, comment, edits and review prior to final issuance.

After a brief recess the chairman called for the Board administrative meeting. Reference was made to the published and posted agenda, noting the items in order listed:

A. The Board reviewed the previous minutes as distributed, and on motion, second and unanimous vote of members present approved same.

B. The Board discussed the schedule of hearings, pending cases, contested calendar and status report. Counsel confirmed the members receipt of updated information on a weekly basis. Members continued their review, questions and exchanges regarding pending

issues. Board members had no further questions after a brief review of the status report.

C. The Board reviewed contested case settlements, motions, and procedures as follows:

1) Cases subject of settlement after submittal of documentation required under the Nevada Administrative Code and Board rules were approved as written re docket LV 17-1876, Nexus Steel and docket LV 17-1894, Vegas Inspect. However, reference was made to insufficient documentation provided for the Board to conduct a complete and meaningful review of the settlement terms with regard to Vegas Inspect. Board counsel noted both matters had to be continued to this public meeting to allow time for OSHES counsel to supplement the settlement documentation. This occurred with regard to LV 17-1876 (Nexus) and the supporting rationale completed the settlement documentation for approval under the requirements of NAC 618 and Board guidance policy. However Vegas Inspect, docket LV 17-1894, did not include any supporting settlement/case resolution information. Counsel advised that while the case was comparatively minor, the Board should note that although sufficient disclosure to satisfy a meaningful review and NAC has been continuing on a majority of the cases resolved, some are again appearing without conformance to the Board guidelines and NAC. Board counsel represented he would continue working with enforcement counsel to assure complete settlement/case resolution documentation is routinely submitted for review to avoid delays in the approval process; and to also assure meaningful rationale is disclosed in support of every case resolution occurring after the commencement of Board jurisdiction.

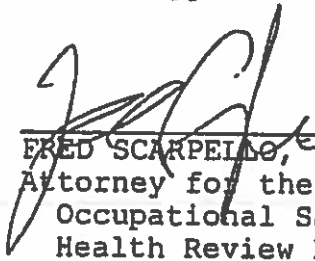
D. The final draft decisions approved at prior public meetings were referenced for any further review or approval for issuance. On motion, second and unanimous vote, the Board approved the final decision draft for completion and issuance as to RNO 16-1851, Reno Forklift, and LV 17-1862, Gilmore Construction. The Chairman instructed Board counsel to complete the final decisions in furtherance of the final drafts and effectuate service on the parties in accordance with Board practice and policy.

E. General administration and procedural issues were discussed without any final action or changes.

F. Board members discussed matters for the next published agenda. Members assured they would notify counsel of any special subjects for inclusion at least 10 days prior to the time for issuance of the agenda for posting and publication.

G. Chairman noted no individuals present other than OSHES counsel, but announced time for public comments. Hearing none, the Chairman called for a motion for adjournment.

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 1:55 p.m.



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