

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.  
October 11, 2017

PRESENT

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

ABSENT

Frank Milligan (alternate)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting at approximately 10:00 a.m., October 11, 2017. The Chairman called the Board to order. The notice of meeting was duly provided under 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. Chairman Barnes announced the meeting would be limited to only administrative matters subject of the published agenda due to continuances of the contested hearings. He noted for the record that contested case hearings require personal attendance of members for appropriate consideration of sworn testimony and submittals of documentary or demonstrative evidence.

On roll call, the Chairman recognized the appearance of members identified above as present; and Board legal counsel telephonically.

The Chairman referenced the contested hearing calendar and identified the cases scheduled on the published public agenda. The Chairman announced docket LV 17-1906, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Restoration and Recovery, LLC and LV 18-1911, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. MJL 12, LLC required continuances to the January and February calendars. The subject meeting is limited to the administrative matters referenced on the published agenda, and made

subject to a telephonic conference call for any members unable to personally attend.

The Chairman and Board reviewed remaining matters on the published meeting agenda:

A. The Board approved the previous Board meeting minutes of September 13, 2017 as distributed on motion, second and unanimous vote of all members present.

B. The Board discussed the current scheduled hearing calendar of pending contested cases, and reviewed and discussed the most recent weekly status report distributed to all members. Counsel noted contested case hearings are now set through March of 2018; and cases recently filed in process would be relegated for setting on the April 2018 calendar on the Northern Nevada docket.

C. The Board reviewed case settlements submitted for consideration and approval for the issuance of final orders. The Board determined supporting documented rationale either met or was satisfactory to meet the Board criteria for compliance with NAC 618. On motion, second and unanimous vote, the following settlements were approved and counsel instructed to prepare and submit to the Chairman Final Orders for service on all parties: LV 17-1888, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Westcorp; LV 17-1893, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Affordable Concepts; RNO 17-1901, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. F. D. Thomas; LV 17-1904, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Royal International; RNO 17-1887, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Harder Mechanical; LV 17-1909, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Earth Resource, and LV 17-1877, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Contractors.

a) The chairman announced final review of the draft decision in docket LV 17-1905, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. The Original Roofing Co. He noted the draft decision had been distributed to all Board members for review and comment. Counsel advised there were no substantive

changes in the previously approved draft decision. He noted, pursuant to the Board cover memorandum, the witness testimony required confirmation through the transcript recently received. The members confirmed receipt and review of the edited final draft decision; and on discussion agreed the written decision and supporting rationale to be in accordance with the vote rendered at the previous public meeting. On motion, second and unanimous vote, the Board instructed the decision as previously approved and now drafted in final form be served on the parties in docket LV 17-1905, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. The Original Roofing Co.

E. The Board reviewed the status of the contracting process for Board legal counsel as previously approved at the September 13, 2017 meeting. Counsel reported the Board vote and supporting materials were forwarded to DIR on September 15, 2017 for submittals to the Board of Examiners in accordance with the previous policy for completing contract documentation. Counsel also reported processing delays were occurring. The Board instructed follow up action to assure BOE submittals for both the extension of current counsel contract on an interim basis, and contract documents for new counsel. Members expressed the need to continue uninterrupted OSHA qualified legal services by Board retained counsel pursuant to NRS 618.585. The members reconfirmed the September 13, 2017 Board vote to assure both contracts be promptly processed to avoid delays or cancellations of scheduled Board hearings and/or meetings. The members commented that regular legal counsel support is required in addition to the actual Board meetings and hearings. Case filings, motions, settlements and procedural issues require time sensitive processing and analysis for distribution to litigants and study by Board members. The Board instructed inquiries be made of DIR to determine the cause of any delays and assist DIR or any other appropriate government personnel to assure both legal counsel contracts are submitted for BOE approval. The Board authorized Chairman Barnes, Acting Chairman Ingersoll and Board legal counsel resolve the contracting issues and report to the full Board accordingly.


F. General administration and procedural items were reviewed by the Board.

G. Counsel requested early information on any special matters for inclusion on the next published meeting agenda to assure proper posting and notifications as required by law.

H. The chairman referenced the published agenda for any public comment. The Board recognized Mr. John Wiles. He reflected upon his long-standing positive interaction with retiring Board legal counsel Scarpello during previous service as Chief

Enforcement Counsel for NVOSHES. Mr. Wiles commended Mr. Scarpello for his demonstrated integrity and legal capabilities. Mr. Wiles also added his endorsement for the OSHA legal and administrative experience of Jim Barnes and underscored his well recognized qualifications to serve as new Board legal counsel. Mr. Scarpello expressed appreciation for Mr. Wiles comments; noting his high level legal ability which was always expressed in an exceptional collegial and professional manner. Mr. Scarpello thanked Board members for supporting his many years of continued legal service to the NVOSHA program, the Review Board and the State of Nevada.

There being no further business before the Board, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 10:30 a.m.

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