

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

Held at DEPARTMENT OF OCCUPATIONAL
SAFETY & HEALTH
4600 Kietzke Lane, Building B, Suite 111
Reno Nevada on
Wednesday, November 8, 2017
Commencing at 9:00 o'clock a.m.

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 9:00 a.m., November 8, 2017. The Chairman called the Board to order. 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 announced that docket RNO 17-1896, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Reno Forklift, Inc. had been postponed and reset for hearing on the April 11, 2018 contested docket calendar based upon a request by respondent counsel.

The Chairman called the Board to order for hearing of the contested matter on the calendar, namely docket RNO 17-1881, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Pelican, LLC. 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. Richard Campbell, Esq. on behalf of respondent, Pelican, LLC.

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 11:45 a.m.

After a brief recess the Board reconvened and commenced deliberation of the submitted case, docket RNO 17-1881, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Pelican, LLC. After study of the hearing notes, pleadings, exhibits, review of applicable case law and deliberation, a question for the vote was called. The Board reached a decision subject to drafting, edits, review for final approval as follows:

On motion, second and majority vote (member Roche dissented), the Board members found a violation at Citation 1, Item 1, by a preponderance of evidence. The classification of Serious confirmed and the proposed penalty in the amount of \$1,500.00 approved.

On motion, second and unanimous vote, Board members present found a violation by a preponderance of evidence as to Citation 1, Item 2, confirmed the classification of Serious and approved the proposed penalty in the amount of \$1,500.00.

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 remaining matters on the published meeting agenda:

A. The Board approved the previous Board meeting minutes of October 11, 2017 as distributed on motion, second and unanimous vote of all members present.

B. The Board noted the schedule of hearings on pending cases, calendar and status report as previously distributed. There were no additional comments with regard to same.

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 Final Orders to the Chairman for signature, return and service on all parties: LV 18-1914, Occupational Safety and Health

Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Fore Construction, LLC; RNO 17-1899, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Sunopta, Inc.; LV 17-1895, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Auburn Electric, Inc.; RNO 18-1913, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Bigford Enterprises, Inc.; RNO 18-1915, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Mt. Rose Heating & Air Conditioning.

D. Board members reviewed and discussed the current status of the legal services contracts previously approved for DIR submittal to the Board of Examiners (BOE). Mr. Barnes advised that the only remaining required document for his contract approval process, a certificate of insurance to confirm his lawyers liability (E&O) coverage, is being emailed to the state contract office.

Members expressed expectation that both the Barnes two year contract and the Scarpello interim contract would be timely approved so as to not interfere with the day to day operations of the Review Board. Board counsel Scarpello noted his interim contract is merely an "extension", therefore not requiring full BOE review and subject of early approval by only the clerk of the BOE. Counsel reiterated expectations for the new legal counsel contract prompt approval because of his planned retirement December 31, 2017; but assured full cooperation and assistance for anything required to facilitate uninterrupted Board operations. Members instructed counsel continue to apprise the Board on the status and report any issues which may require Board member assistance with DIR or any other appropriate government agencies in accordance with the previous instructions.

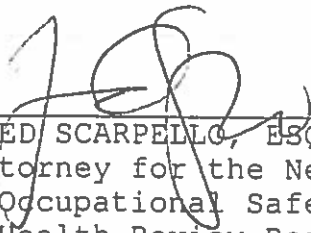
E. General Administration, or procedural issues - Board members added no additional information to the distributed advisories.

F. Discussion occurred with regard to the next published meeting agenda. Counsel noted the December contested hearing calendar had been continued to January 10, 2018 due to the unavailability of CSHO witnesses because of training. Counsel advised this resulted in a heavily "stacked" January contested hearing calendar. Board members confirmed instructions to schedule the administrative meeting for December 13, 2017 to approve "possible action" items at the published open meeting, including case settlements, decision drafts, and report on the status of both legal services contracts. The Board agreed to schedule the meeting

in Reno and provide the option for any Board members to attend the administrative meeting telephonically. After discussion Board members Ingersoll and Barnes indicated they would personally attend the meeting as will current Board counsel Scarpello if the Reno venue is confirmed.

G. Public comment. The chairman called for public comment, however there was no member of the public present to request a comment.

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 12:45 p.m.



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