

STATE OF NEVADA

**Minutes for the
Nevada Occupational Safety and Health Review Board
Las Vegas, Nevada**

February 11/12, 2020

**Rodd Weber (Management)
James Halsey (Labor)
Frank Milligan (Public)
Lance Semenko (Management)**

On February 11, 2020, a meeting of the Nevada Occupational Safety and Health Review Board was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Enterprise Library, 25 E Shelbourne Avenue, Las Vegas, Nevada 89123. Participating in person were Board Secretary Rodd Weber and members James Halsey, Frank Milligan and Lance Semenko. Chairman Steve Ingersoll was absent. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him all written materials to be considered during the deliberations or was obliged to refrain from voting if not in possession of the materials.

The Meeting was called to order at 10:15 a.m., by Board Secretary, Rodd Weber.

1. Roll Call.

Participating in person were Board Secretary Rodd Weber and members James Halsey, Frank Milligan and Lance Semenko. Chairman Steve Ingersoll was absent. As four members of the Board participated in the meeting, including a representative of labor and a representative of management, a quorum was present to conduct the Board's business.

Also, personally in attendance were Salli Ortiz, Esq., counsel to the Chief Administrative Officer of the Occupational, Safety and Health Administration of the Division of Industrial Relations, of the Department of Business and Industry, State of Nevada and Board of Review Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq.

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.

Notice of the meeting was posted or published, electronically or otherwise, consistent with the requirements of the Nevada Open Meeting Law.

2. Public Comment.

The Acting Chairman Weber (hereinafter, Chairman) called this item to be heard. There was no public comment.

3. Contested Case Hearings.

Chairman Weber called this item to be heard, the contested cases. He asked Board legal counsel to set the hearing. Board counsel advised that the Trump Ruffin Commercial, LLC matter, LV 19-1999, a fatality case, had been settled according to Salli Ortiz, Esq., prosecutor for this matter.

Accordingly, the Board is to hear, next in order, Westcor Construction, LV 18-1952. The hearing convened, then, on this matter. Appearing on behalf of the Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada, was Ms. Ortiz. Appearing on behalf of the respondent, Westcor Construction, was Raymond Perez, II, Esq., of Jackson Lewis. Witnesses were sworn, testimony taken, and documents admitted into evidence. Both sides rested their respective cases. As it was 3:00 p.m., and the labor representative had to depart the hearing, the Board concluded that it would continue the matter to the following morning, when deliberations and a decision would be rendered.

This concluded, therefore, the business of the Board on this date for this case.

Public comment. The Chair opened the meeting for public comment. There was none.

Adjournment. Before adjournment, member James Halsey departed the hearing. It was moved, however, by Frank Milligan, seconded by Lance Semenko, to adjourn the meeting. Motion adopted.

Vote: 3-0 (Halsey departed).

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February 12, 2020

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James Halsey (Labor)
Frank Milligan (Public)
Lance Semenko (Management)**

Rodd Weber continued to Chair the meeting which he convened at approximately 10:16 a.m.

1. Roll Call.

Board members present were Rodd Weber, James Halsey, Frank Milligan, and Lance Semenko. Chairman Steve Ingersoll was absent. Also present, were Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Salli Ortiz, Esq., for the State, and Raymond Perez, II, Esq., for Westcor Construction dba Westcor Framing.

2. Public Comment.

There was no public comment.

3. Contested Case Hearing.

b. LV 18-1952, Westcor Construction, LLC

Item 3.b., continued. Chairman Weber called the Westcor Construction, LV 18-1952 to be heard to conclusion. Counsel for both parties, Salli Ortiz, Esq., and Raymond Perez II, Esq., were present for the deliberations along with their client representatives.

As both parties had rested, the Board took up disposition of this case. After considerable debate and a review by Board counsel of the *Original Roofing Company*, case, 442 P.3d 146 (Nev., 2019), which sets the new Nevada standard for imputing supervisor knowledge to the employer when the supervisor is the violator of the regulation at issue, for Item One, it was moved by Frank Milligan, seconded by Lance Semenko, to affirm Item One, as charged and to affirm the penalty being assessed of \$7,000.00.

The Board then turned to Item Two, and deliberated. When deliberations were concluded, it was moved by Frank Milligan, seconded by Lance Semenko, to dismiss and vacate this item, rejecting the claim made by the State on this matter. **Motion adopted.**

Vote: 4-0.

Chairman Weber next called Item 3.f., to be heard, Westcor Construction dba Westcor Framing, LV 19-1980. The parties appeared by and through counsel, Salli Ortiz, Esq., for the Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada, and Raymond Perez, II, Esq., for Westcor Construction dba Westcor Framing.

Because of some issues regarding the respondents exhibits (copying, number of copies), the Board moved to item Four on the Agenda, pending the exhibit issues being resolved.

4. Administrative Meeting:

a. Approval of the previous Review Board minutes of January 28 and 29, 2020.

The January 2020 minutes were tabled due to the want of a proper quorum.

b. Review contested cases settlements, motions, draft decisions, or procedural issues pending on the status report, for approval and issuance of final orders:

- i. LV 19-1967, Allied Building Materials, Inc. dba Cind-R-Lite Block Company.** Chairman Weber called this matter to be heard, a settled case. It was moved by James Halsey, seconded by Lance Semenko, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0

- ii. LV 19-2001, Byrd Underground, LLC.** Chairman Weber called this matter to be heard, a settled case. It was moved by James Halsey, seconded by Lance Semenko, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0

- iii. LV 20-2004, Lone Mountain Excavation & Utilities, LLC.** Chairman Weber called this matter to be heard, a settled case. It was moved by Lance Semenko, seconded by Frank Milligan, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0

- iv. LV 20-2013, Rooster Philben, Inc. dba Stout Management Company.** Chairman Weber called this matter to be heard, a settled case. It was moved by Frank Milligan, seconded by James Halsey, to approve the disposition of this case. **Motion adopted.**

Vote: 4-0

- v. **LV 20-2006, First Quality Roofing & Tile, re: Order of Dismissal with Prejudice (Order of Dismissal With Prejudice).** Chairman Weber called this matter to be heard, an Order of Dismissal With Prejudice. It was moved by James Halsey, seconded by Frank Milligan, to approve the Order of Dismissal With Prejudice. **Motion adopted.**

Vote: 4-0

c. General administration and/or procedural issues.

i. General matters of import to Board members.

Board counsel advised that the manner in which exhibits are brought to the Board plus the disclosure of witnesses is most unsatisfactory. There is a document dump at the outset of the case and skirmishes about admissibility that make for a less than precise and for a fractured process. Board counsel wants to devise a process that makes sense and is efficient for the benefit of the Board and parties. The Board members concurred as did Salli Ortiz.

ii. Old and New Business.

There was no old or new business discussed.

d. Schedule of hearings on pending cases, calendar and status report.

The schedule of meetings was left untouched.

The Board has scheduled the following meetings:

- * **March 10 and 11, 2020**, Enterprise Library, 25 E Shelbourne Avenue, Las Vegas, Nevada 89123.
- * **April 8 and 9, 2020**, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **May 13 and 14, 2020**, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **June 10 and 11, 2020**, 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **July 8 and 9, 2020**, 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **August 12 and 13, 2020**, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **September 9 and 10, 2020**, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **October 14 and 15, 2020**, 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- * **November 12 and 13, 2020** - *Location to be determined.*
- * **December 9 and 10, 2020** - *Location to be determined.*

f. LV 19-1980, Westcor Construction dba Westcor Framing.

The hearing then commenced with the State's case-in-chief going first. Two witnesses were sworn and their testimony taken. Also, documents were admitted into evidence, except the respondent's Exhibit L, which was marked for identification but not yet admitted into evidence. After the State's second witness concluded testifying, it was determined that there was insufficient time to complete the hearing on this matter, with the parties stipulating to the continuation of the matter. It will be rescheduled for hearing at a later date. Meanwhile, the State had not concluded its case-in-chief.

5. Public Comment.

Upon conclusion of the testimony of LV 19-1980, Westcor Construction dba Westcor Framing, the Chairman called for public comment. There was no public comment.

6. Adjournment. It was moved by Frank Milligan, seconded by Lance Semenko, to adjourn the meeting. **Motion approved.**

Vote: 4-0

/s/Charles R. Zeh, Esq.
Charles R. Zeh, Esq., Board Legal Counsel

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