

STATE OF NEVADA

Minutes for the Nevada Occupational Safety and Health Review Board Reno, Nevada

July 8, 2020

Via teleconferencing

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

On July 8, 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 as modified by Governor Sisolak's Emergency Directive 006, permitting meetings to be conducted by teleconferencing and providing for a refined publication process for posting and the publication of agendas or notices of the meeting. This meeting took place by teleconferencing. The hearing was recorded by a court reporter, Nicole Hansen. Participating by telephone were Chairman Steve Ingersoll, Board Secretary Rodd Weber, and members James Halsey, Frank Milligan and Lance Semenko. 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.

Chairman Ingersoll called the meeting to order at 9 o'clock a.m., by telephonic conferencing.

1. Roll Call.

Present by telephone were Chairman Steve Ingersoll, Board Secretary Rodd Weber and Board Members James Halsey, Frank Milligan and Lance Semenko. As five 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, participating by telephone 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, Jimmy Andrews, Program Coordinator for State OSHA, and Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Victoria Carreon participated in portions of the meeting as the Director of the Division of Industrial Relations.

Also in attendance were Willa Perlmutter for Docket No. RNO 20-2019, Harder Mechanical Contractors, Inc., Adam Roseman, for Docket No. RNO 20-2024, Stericycle, Inc., David Avakian for Docket No. LV 19-1999, Trump Ruffin Commercial, LLC and Marcus Berg also for Docket No. LV 19-1999.

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, as modified through the Governor's Emergency Directives. 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 as further modified by Emergency Directive 006 of the Governor.

2. Public Comment.

There was no Public Comment.

3. Administrative Meeting:

a. Approval of Previous Review Board Minutes of June 10, 2020.

It was moved by Lance Semenko, seconded by Frank Milligan, to approve the minutes of June 10, 2020, as read. **Motion adopted.**

Vote: 5-0.

b. Review Contested Case Settlements, Motions, Draft Decisions, or Procedural Issues Pending on Status Report, for Approval and Issuance of Final Orders:

i. LV 19-1972, Universal Protection Service, LP aka Universal Protection Service, LLC dba Allied Universal Security Services.

It was moved by Rodd Weber, seconded by James Halsey, to accept the proposed settlement as written. **Motion adopted.**

Vote: 5-0.

ii. LV 19-1999, Trump Ruffin Commercial, LLC.

It was moved by Frank Milligan, seconded by Lance Semenko, to approve the settlement as proposed. **Motion adopted.**

Vote: 5-0.

iii. LV 20-2012, NBC Nevada Merchants, Inc. dba T.J. Maxx.

It was moved by Rodd Weber, seconded by James Halsey, to approve the settlement as proposed. **Motion adopted.**

Vote: 5-0.

iv. RNO 20-2019, Harder Mechanical Contractors, Inc.

It was moved by Frank Milligan, seconded by Lance Semenko, to approve the settlement as proposed. **Motion adopted.**

Vote: 5-0.

v. RNO 20-2024, Stericycle, Inc.

It was moved by James Halsey, seconded by Frank Milligan, to approve the settlement as proposed. **Motion adopted.**

Vote: 5-0.

c. General administration and/or procedural issues.

i. General matters of import to Board members.

There was no discussion.

ii. Old and New Business.

There was none discussed.

iii. Conduct of contested case hearings. The Board will discuss the efficacy of using teleconferencing to hear cases or defer hearings until "in-person" hearings may be held, or it may continue this issue to a later date.

Under this heading, as well as Item 3.c.i., the Board discussed what to do about the August 5 and August 6, 2020 Board meeting with respect to contested cases. The Board was informed that the travel restrictions still apply to State personnel such as Salli Ortiz, who would be unable to travel under these restrictions from Reno to Las Vegas in order to conduct the hearing in person on the contested matters scheduled in Las Vegas on August 5 and August 6, 2020. Additionally, the Board was informed that the State offices are still closed to the public, a circumstance which would preclude conducting contested hearings in Las Vegas at the West Sahara State Offices. Additionally, new travel guidelines were issued as of July 7, 2020, according to Victoria Carreon who joined this portion of the meeting for a discussion of this subject. Generally speaking, there remains an enormous uncertainty as to whether and to what extent the State would open up enough in order to be able to conduct in-person contested case hearings.

The Board remains generally of the mind set, however, that contested hearings should be conducted in person rather than *via* video conferencing. Audio conferencing is inadequate medium to conduct contested hearings. Nevertheless, at some point, the Board is going to be forced to conduct hearings on these contested cases as they begin to pile up and beg for resolution. The prospect of using the Clark County Library on Shelburne, again, for meetings

was raised. No one present or participating in the hearing knew, however, whether the Shelburne location of the Clark County Library was open for business in order to provide a facility for the conduct of contested hearings.

There also remains, at present, the question of whether state-wide travel restrictions on employees such as Ms. Ortiz will continue to apply.

Ms. Ortiz, however, continued to express her view of the value of conducting these contested cases in person. Ms. Carreon pointed out that both existing requirements limiting the manner in which public hearings may be conducted and the uncertainty about travel inform the Board to cancel the contested hearings for the August 2020 meeting of the Board and to reschedule those matters at a later date on the Board's contested docket. Postponement of these cases would also give the Board another month to assess the landscape which would hopefully provide more clarity about the use of State facilities, travel and the like.

The State has acquired the technical capacity to conduct hearings by video conferencing. Jimmy Andrews is the point person for the use of video conferencing to conduct State Board meetings. He will be experimenting with the technology and will be available to discuss its efficacy as applied to OSHA Board of Review contested hearings in time to assess the feasibility of conducting hearings in this manner, if necessary, in September 2020.

It was accordingly moved by Rodd Weber, seconded by James Halsey, to cancel the contested docket for the OSHA Board meeting commencing August 5, 2020, but to hold that date for the conduct of Administrative Business, such as that which took place on this date. The contested cases for August 2020 will be vacated and rescheduled. **The motion was adopted.**

Vote: 5-0.

This concluded the discussion under Item 3.c of the agenda.

d. Schedule of Hearings on Pending cases, calendar and status report.

There was no further discussion under this heading as the August 2020 Board meeting was resolved by motion.

4. Public Comment.

There was no Public Comment.

5. Adjournment.

It was moved by James Halsey, seconded by Rodd Weber, to adjourn the meeting. **Motion adopted.**

Vote: 5-0

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

S:\Clients\OSHA\Minutes\2020\July 2020 R3.wpd