

STATE OF NEVADA
Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, NV

November 8, 2023

Rodd Weber (Management)
Frank Milligan (Public at Large)
Jorge Macias (Management)
Scott Fullerton (Labor)

On November 8, 2023, 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 Division of Industrial Relations, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102. The Board convened at the Division of Industrial Relations offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102. 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 Rodd Weber called the meeting to order of the OSH Review Board at approximately 9:02, a.m., PST.

1. Roll Call.

Board members present in Las Vegas were Chairman Rodd Weber, Frank Milligan, Scott Fullerton and Jorge Macias. Vice-Chairman William Spielberg was absent due to work related reasons. As four of the five members of the Board were present for the meeting, including one member representing labor, one member representing the public at large and two members representing management, a quorum was present for the Board to conduct its business on this date.

Salli Ortiz, Esq., Legal Counsel to State OSHA, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Legal Counsel to the Board of Review, were also present.

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 as amended by AB 253.

Notice was posted at the following locations:

The Law Offices of Charles R. Zeh, Esq.
50 West Liberty Street, Suite 950
Reno, Nevada 89501

Division of Industrial Relations
3360 West Sahara Avenue, Suite 175
Las Vegas, Nevada, 89102

This Notice was also posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR) website at <https://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <https://notice.nv.gov>

Each Notice was timely posted.

2. Public Comment.

There was no public comment at the hearing and Board counsel advised that there was no public comment in written form received by Legal Counsel's office prior to the commencement of the meeting.

3. Contested Case Hearings.

Board Chairman Rodd Weber called this item to be heard. Of the nine cases listed on the Agenda under this heading, eight were either settled or for other reasons the hearings vacated, leaving one matter to be heard on the contested docket, LV 23-2216, Complete Demo Services. The Chairman called this matter to be heard. The State was represented by Salli Ortiz, Esq. The Respondent, Complete Demo Services, was represented by Jack Paripovich. Mr. Paripovich is not a lawyer. He is the President of Complete Demo Services and appeared on behalf of Complete Demo Services as its lay representative.

The State offered exhibits 1 and 2 for admission into evidence, consisting of pages 1 through 126. Mr. Paripovich had no objection to the admissibility of Exhibits 1 and 2 and Board Chairman Weber admitted them into evidence without objection. Mr. Paripovich, on behalf of Complete Demo Services, offered one exhibit consisting of pages 1 through 34 for admission into evidence. Ms. Ortiz had not seen exhibit 1 being offered into evidence and, therefore, asked the Board for a continuance to allow her to examine the Exhibits before addressing admissibility. She advised that she would be available for the December 2023 meeting of the Board to hear this matter. She advised the CSHO would be available then, also. Mr. Paripovich had no objection to the continuance and said that he would be available anytime the month of December 2023.

Chairman Weber, therefore, continued the hearing of this matter. At the time of the continuance, Exhibits 1 and 2 from the State, pages 1 through 126, were admitted into evidence without objection. As for the Respondent, Exhibit 1, pages 1 through 34, admissibility was pending.

The Chairman then called the Administrative portion of the hearing of the Board to order, Item 4., the Administrative Meeting:

- a. Review Board meeting minutes of October 11, 2023.

It was moved by Jorge Macias, seconded by Frank Milligan, to approve the minutes of October 11, 2023 Board meeting as read. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

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

Chairman Weber called this matter next. For each of the matters pending under this heading, the proposed settlement agreement with explanation and justification for settlement were read into the record. For each case, the Board's action was based upon this information conveyed to the Board members prior to voting. The Board had the option to approve, modify or reject the proposed settlement agreements presented to the Board.

- i. LV 21-2122, National Pipeline Contractors, LLC

This matter was called. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement as presented by the State. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

- ii. RNO 22-2152, Pokrajak Corporation

This matter was called. John Hunt, Esq., was present on behalf of the Respondent. He had the opportunity to discuss the proposed settlement, if warranted. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement as proposed by the State. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

Mr. Hunt departed the hearing and wished the Board members a Happy Thanksgiving.

iii. RNO 22-2159, Gilbane Building Company

This matter was called. It was moved by Frank Milligan, seconded by Jorge Macias, to approve the settlement as proposed. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

iv. LV 21-2130, Greystone Nevada, LLC

This matter was called. It was moved by Scott Fullerton, seconded by Frank Milligan, to approve the settlement as proposed. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

v. RNO 22-2161, Valley Joist LLC

This matter was called. It was moved by Jorge Macias, seconded by Frank Milligan, to approve the settlement as proposed. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

vi. RNO 21-2111, 5148 Mae Anne, LLC; McDonald's of Mae Anne & McCarran

This matter was called. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the settlement as proposed. **The motion was adopted.**

Vote: 4-0-1 (Speilberg absent for the reasons stated).

vii. LV 21-2127, Sethi Management; JP Sethi Enterprises, Inc. dba 4 Points Sheraton Las Vegas

This matter was called. Mr. Charles P. Hamamjian, Esq., council to the Respondent, had advised the Board earlier in the day, that he wanted to be present for the disposition this settlement. An estimated time was given to him for when the Board members thought they would reach deliberations on this case. Mr. Hamamjian was free to observe the proceedings until his case was called or discontinue observation of the proceedings and return when he thought his case would be called. He chose the latter. But, when the case was called, he had not rejoined participation. The Board, therefore postponed hearing this matter until later in the meeting to give Mr. Hamamjian the opportunity to be heard. After checking several times to see if Mr. Hamamjian was present, the Chairman declared that this case would be continued to the December 2023 meeting of the Board.

viii. LV 17-1874, Performance Builders

This case was next called. Performance Builders was represented by Andrew Clark, Esq., who participated electronically by telephone. Salli Ortiz, Esq., was present for the State. This matter required the Board to consider the proposed Findings of Fact, Conclusions of Law and Final Order, and compare them with the written decision in this case, in order to determine whether the proposed Findings of Facts, Conclusions of Law and Final Order (FOF) were consistent with the written Board Decision. The Board concluded that the FOF were consistent with the Decision. Mr. Clark conceded that there was no conflict regarding the draft Findings of Facts, Conclusions of Law and Final Order. It was moved by Jorge Macias, seconded by Frank Milligan to approve the proposed Findings of Facts, Conclusions of Law and Final Order as being consistent with the written decision by the Board. **The motion was adopted.**

Vote: 4-0-1 (Spielberg absent for the reasons stated).

ix. LV 17-1907, Performance Builders

This matter was called. This was a second Performance Builders case. It had the same issue as the previous Performance Builders matter, namely, whether the proposed Findings of Facts, Conclusions of Law and Final Order were consistent with the Board's written decision in this matter. Andrew Clark, Esq., appeared electronically, by telephone, for this matter, also. Salli Ortiz, Esq. appeared for the State. Mr. Clark advised that there was no conflict between the proposed Findings of Fact, Conclusions of Law and Final Order and the Board's written decision in this matter. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve the proposed Findings of Facts, Conclusions of Law and Final Order as an action approved by the Board. **The motion was adopted.**

Vote: 4-0-1 (Spielberg absent for the reasons stated).

x. LV 17-1900, Xtreme Manufacturing

This case was called. This case presented the same issue as the previous two matters, namely, whether the State's proposal Finding of Fact, Conclusions of Law and Final Order, were consistent with the Board's written decision. The Board concluded that they were. Accordingly, it was moved by Frank Milligan, seconded by Jorge Macias., to approve the prepared Finding's of Fact, Conclusions of Law and Final Order as an action approved by the Board. **The Motion was adopted.**

Vote: 4-0-1 (Spielberg Absent for the reasons stated).

4.c. Status Conference Hearings.

i. LV 19-1961, Apex Linen Service, Inc.

This matter was called as a status conference to determine the status and take action accordingly. Salli Ortiz, Esq., was present for the State. No one appeared for the Respondent, though noticed. The case was decided by the Board, after which the respondent filed

Bankruptcy, before the Board had approved the Findings of Fact, Conclusions of Law and Final Order for Filing. Subsequent to the filing of Bankruptcy and the decision of the Board, Donald Smith, Esq., former Chief Legal Counsel to the DIR, sent a letter informing Bankruptcy counsel for the Respondent that the DIR does not proceed with cases where a Bankruptcy on behalf of the employer/Respondent has been commenced and, therefore, the DIR would not be drafting the FOF for this case.

Subsequently, however, Salli Ortiz, Esq., on behalf of the State, submitted to the Board a set of proposed Findings of Facts, Conclusions of Law and Final Order, for final disposition of the case. Given the conflict between the proposed Findings of Facts, Conclusions of Law and Final Order and Mr. Smith's claim that no further action would be taken in the form of Findings of Facts, Conclusions of Law and Final Order because of the Bankruptcy in this matter, this status conference was ordered to resolve this conundrum. Board counsel stated that in his opinion, the Bankruptcy does not prevent the Board from considering the prepared Findings. OSHA proceeding's are a part of the police power of the State and, therefore, an action exempt from the automatic stay provisions of a Bankruptcy.

Ms. Ortiz, concurred in that opinion and advised further that Mr. Smith was no longer with the State of Nevada. She had replaced him in this case. Board counsel advised that in his opinion, the Board may proceed to address the proposed Findings of Facts, Conclusions of Law and Final Order to determine if they were consistent with the Board's decision reached before the Bankruptcy was even filed. It was, accordingly, moved by Frank Milligan, seconded by Jorge Macias, to approve the Findings of Facts, Conclusions of Law and Final Order proposed by the State of Nevada as consistent with the decision entered into by the Board in this case. **The motion was adopted.**

Vote: 4-0-1 (Spielberg absent for the reasons stated).

4.d. General Administration and/or procedural issues.

i. General matters of import to Board members.

There was no discussion.

ii. Old and New Business.

Frank Milligan repeated his concern that the Board membership be fortified with the appointment of an alternate, at-large member. He had inquired about this at the last Board meeting and Victoria Carreon advised that she would get back to the Board on this issue. At the September, 2023 meeting of the Board, she previously explained that this entailed connecting with the Governors's office as that is the source of all appointments to the Board. Ms. Carreon was not immediately available but joined the meeting shortly after this item was called and advised that, in effect, she did not have anything to report at this time but would check with the Governor about the appointment of an alternate at-large member, and get back to the Board. The Chairman offered that he thought a name had been submitted and was pending for appointment.

- iii. Discussion of the process by which the Board selects and employs its Legal Counsel.

This matter was called to be heard especially since Ms. Carreon was still on the line participating electronically at this stage in the proceedings. The Chairman brought the issue of Board Counsel's contract up for discussion to re-clarify from last month because Mr. Milligan had asked the status of Mr. Zeh's contract and that is a one-year contract only with the State. The question, then, is at what point would the Board need to start going out for an RFP or RFQ to timely and seamlessly secure a new contract? The Board made clear that the Board makes the selection of legal counsel as confirmed by member Milligan and reiterated by Board Chairman Weber.

Discussion then turned to the planning for the renewal and selection of the Board legal counsel. Member Milligan wanted the selection process to be move back a little bit because we were not able to meet for how long? Six months according to Chairman Weber. The Board stated that the delay in contracting with legal counsel was a disservice to this State. The Board did not want a repeat.

Mr. Carreon advised that the state would have a time line which would bring the matter of the contract before the Board of Examiners in May for approval and that there would be enough leeway in the process to have the contract approved in June, thereby avoiding any pause in the conduct of the Board business.

The Board wanted to know whether the State could extend Mr. Zeh's contract until we make a permanent selection this time. Ms. Carreon advised that there would be no extensions on the contract. She said, she did not think that would be necessary because we're going to be getting the process done in time. This was for the record.

Ms. Carreon told the Board that we weren't going to be able to do any extensions on the contract. She stated, however, that she did not think that would be necessary because we are going to begin the process in time. The Board made it clear, this is for the record.

Chairman Weber then took up the billing process for the Board's legal counsel. He stated that the contract is an annual contract for a specific amount, is that correct? Ms. Carreon advised that it is a total not to exceed the amount on the annual contract because it actually went a little more than 12 months.

Chairman Weber then stated so it's a total contract not to exceed an amount. Ms. Carreon stated that's correct. Chairman Weber stated so if the Board counsel charged a large amount one month then a small amount the next month it wouldn't necessarily be regulated and by the State provided that Board counsel does not exceed the total amount of the contract at the end of the term, is that correct? Ms. Carreon stated, you are correct and yes you could have a charge of \$50,000 in one month, a charge of \$5,000 in another as long as the whole thing turned out to be within the contract total authorized then we would be okay.

The Chairman then indicated that in the past there were times when there were overruns for that year on a total contract amount but the Board was able to cover that shortfall for Board counsel and the Chairman wanted to know if that was still an opportunity going forward, as well, for present Board counsel if that becomes the case because the fact is we have a lot of cases that sat and were dormant for a six-month period of time. We are trying to get caught up with things and that may require more work. Ms. Carreon advised we could certainly take a look at that and see if that's possible. Any amendment to the contract would have to go through an amendment process, it would have to go back to the Board of Examiners and it would also go through the Governor's finance office.

This exhausted the discussion of Board counsel's contract except that for the record the Board wanted to keep the contract on the Board's agenda and get an update on this, so we would not have the same situation that we had last year. Chairman Weber concurred in that thought.

The discussion turned to future meetings of the Board. The Board will meet on December 13 and 14, 2023, in Las Vegas and on the 10th and 11th of January, 2024 in Reno. Board Chairman stated that he will be available on the 10th but not on the 11th.

The Board wanted to know also who the contact was for travel for the Board to attend Board meetings. According to the Chairman, Mr. Gardner advised that the travel contact is Kim Toledo. Member Fullerton wanted to remind everyone that he would not be available on the 13th and 14th of December, so we will need to make sure that Mr. Spielberg can be here so we can have a quorum. Mr. Fullerton said he could be available the week prior if that was necessary or have a quorum. The discussion of the Board meetings was then continued to the next meeting. This concluded the discussion under this item on the agenda.

5. Public comment.

The Chairman called for this item to be heard. There was no public comment offered at the hearing and Board Counsel advised that no public comment had been received by his office during the course of the hearing on this date.

6. Adjournment.

Chairman called for this matter to be heard. It was moved by Scott Fullerton, seconded by Jorge Macias, to adjourn the meeting. **The motion was adopted.**

Vote: 4-0-1 (Spielberg absent for the reasons stated).

Dated this 13 day of December, 2023.

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