

DIVISION OF INDUSTRIAL RELATIONS ADVISORY COUNCIL
Minutes of the Meeting, Wednesday, September 4, 2019

1. Call to Order and Roll Call

At 10:00 a.m. September 4, 2019, the meeting of the Advisory Council for the Division of Industrial Relations (DIR) via videoconference between the Las Vegas DIR office and the Carson City DIR office was called to order by DIR Administrator Ray Fierro.

Council members present at the Las Vegas Office were Raymond McAllister, William Spiegel and William Stanley. The council member present in the Carson City office was Paul McKenzie. It was determined a quorum was present.

DIR staff present in the Las Vegas Office were Ray Fierro, Victoria Carreon, Jess Lankford, Chuck Verre, Brennan Paterson, Todd Schultz, Donald C. Smith, and Amanda Guimont. Others present were John Wiles, and Joe Boswell. DIR staff present in the Carson City office was Jeff Bixler.

2. Public Comment on items to which actions may be taken

No items for public comment were raised.

3. Selection of Chair and Vice Chair – Bill Stanley nominated Paul McKenzie as Chair, seconded by Rusty McAllister. Unanimous vote to nominate Paul McKenzie. Paul McKenzie nominated Bill Stanley for Vice Chair, seconded by Rusty McAllister. Unanimous vote to nominate Bill Stanley.

4. Approval of Minutes of Previous Meeting – January 10, 2018. Since Rusty McAllister was the only member present at the meeting on January 10, 2018, it was determined that the board members would table the approval of minutes until they can review a transcript from the previous minutes.

5. Administrator's Report

DIR Administrator Ray Fierro introduced himself, Deputy Administrator - Victoria Carreon, Chief Administrative Officer of OSHA - Jess Lankford, Chief Administrative Officer of WCS - Chuck Verre, Chief Administrative Officer of MSATS - Jeff Bixler, Chief Administrative Officer of MCS - Brennan Paterson, Senior Division Counsel - Donald C. Smith, Chief Administrative Officer of SCATS - Todd Schultz, and Amanda Guimont - Administrative Assistant IV.

6. Legal Section

Donald C. Smith, Senior Division Counsel, gave a Regulation and Legislative summary, and directed council members to view the supporting documents in the meeting binder provided. LCB File No. R127-17 was approved by Legislative Commission on January 30, 2019. Bill Stanley asked for clarification on SB-119, and Jess Lankford responded. Paul McKenzie asked for clarification on AB-290, and Todd Schultz responded. Paul McKenzie asked about SB-234, and Don Smith responded.

7. Mechanical Compliance Section

CAO Brennan Paterson gave a brief summary of the strategic plan that was completed and implemented over the last 18 months. The revised assessment strategies, performance metrics, and new goals are in the supplemental information section of the binder. MCS has had a major goal of improving relations with all stakeholders, and it has been very successful. MCS has difficulty retaining staff due to wages and benefits offered by the state not being able to compete with private industry. We have proposed several changes to NAC 455C, which includes automatic adoption of currently adopted codes six months after publication. We are hopefully adopting regulations to regulate historic power boilers to ensure public safety. We are looking at requiring flammability testing on interior panels for residential elevators. We are going to be changing the renewal and expiration dates for licenses, so they will be good for a year regardless of when renewed. We have implemented a new database system that allows elevator inspectors to input inspection data directly into the system. It has reduced errors, and has vastly increased the speed of issuing permits and issuing violations. Additionally the third party inspection agencies are collecting permit fees on behalf of MCS through this system. We are currently in development of a mobile app to allow inspectors, mechanics, and other interested parties to access elevator data in the field via scanning QR codes. By the third quarter of next year in 2020, MCS plans to be completely finished with the transition to a paperless fine submittal system. MCS was audited by the LCB, and has completed all seven recommendations given. This information is located in the supplemental information portion of the binders. Brennan Paterson summarized the annual activity numbers for the MCS.

Bill Stanley asked about the new paperless system, and how noncompliances will be issued. Brennan Paterson answered that currently paper is given onsite at the owner's request. Otherwise, it is sent via email unless there is no electronic means of delivery.

Paul McKenzie asked about the UNR investigation. He read the report on the investigation, and wanted to know if the person working on the boiler was licensed with the city of Reno. Brennan Paterson responded that we do not request documentation from local jurisdictions. He was licensed with Nevada State Contractor's Board, and his paperwork was in order.

Paul McKenzie also asked what lessons we learned from the explosion to ensure that something like this doesn't happen again. Brennan Paterson responded that there are still open investigations being conducted by the State Fire Marshall's office and other state agencies, so there are items that he cannot speak to until they have released their reports. As for the report that was released by DIR, the primary lessons learned and recommendations are that we should be including and creating regulations to require emergency shut off of gas tied into boiler shutoffs on all installations. It could have saved the building if this type of device had been installed. In addition, we would like to look at relocating gas lines that feed boilers like this, away from the bodies of boilers so the gas line itself would not be severed.

Paul McKenzie asked if we are working on regulation to implement those things so we can get this fixed. The gas shut off valve was right next to the boiler, and they couldn't shut the gas off in the building. They had to go look for the gas shut off outside. Brennan Paterson responded

that we are moving forward with the regulation and we are also exploring licensing of boiler mechanics. We are working with stakeholders right now to see what that licensing program would look like. That is in the exploratory phase.

8. Mine Safety and Training Section

CAO Jeff Bixler stated that our section began in 1909, which is about 69 years before federal MSHA showed up, and still today, federal MSHA will refer customers with both compliance and training issued to our office. We complete our mission with a staff of fourteen employees, and we are currently down three inspectors. We have an ongoing training issue where we train inspectors, get them up to speed in about a year or so, and as soon as they are trained and competent out in the field, someone in the mining industry will offer them a job that pays much more than we can pay them. Jeff Bixler gave a brief year in review report, including training statistics. MSATS has created a good working relationship with the mine sites. They aren't afraid to talk to us, and identify problems that they need help with. They trained 94 US Airforce personnel on the test site, and 32 US Marines on their subterranean training. They came to Nevada to train. We had a couple of Army rangers sit in on the training with the Marines to see if it would work for them. Federal MSHA refers people from all over the country to NV MSATS training.

Bill Stanley asked if the current staffing issue is affecting our mission. Jeff Bixler responded, "Absolutely." We have been able to make it work pretty well over the last few years because we have had experienced people who have been with the state for a long time, but now they are retiring. We are filling those positions with new people, and training them with inexperienced people. It is definitely affecting our mission.

Bill Stanley mentioned that Brennan Paterson had a similar complaint, and he's sure we will hear it from the rest of the CAOs as well. Should we develop a strategy for 2021 to address these issues? If we could make a strategy for the next legislative session to address these issues. Jeff Bixler responded that we are trying to submit requests to hire at a higher step, equaling close to an \$8000 increase in the starting pay. This still doesn't match the Nevada Mining Association's numbers, but it helps get closer to a livable wage.

Ray Fierro mentioned that the council can make suggestions of conducting a wage study. You will hear the rest of the CAOs bring up this topic. We are noticing when the economy took a downturn and we had hiring and wage freezes, and then the economy recovered, but the state is still behind the private industry. We are starting to feel it a lot more, especially within the last year.

Bill Stanley mentioned that a few years ago there was such an issue with inspection of elevators in the state of Nevada, the division came to those stakeholders and we put forth the whole concept of third party inspectors, to at least insure that elevators were being inspected. Historically boilers had been handled by inspectors from the insurance industry. At some point it

was decided that it was better to be looked at by somebody than not to be inspected at all. He wonders if this would work for the mines as well.

Paul McKenzie agrees that we need to figure out a way to keep people around. We need to talk to our legislators about doing something to raise pay.

9. Occupational Safety and Health Administration

CAO Jess Lankford summarized OSHA activities, and referred the council to supporting documentation in the meeting binder. The fatality report was discussed.

Bill Stanley discussed the possibility of regulating reciprocating lifts. Jess Lankford responded that there is no current talk about specific regulations, but we do have more general ways to site this.

There was discussion comparing the complaint log with the fatality log. There is a concern of letters being sent instead of investigating health complaints. Jess Lankford responded that we often use these inquiries when we don't have a direct standard for the conditions, such as heat and cold exposures. Ray Fierro responded that if any of us, across all sections, discover internally or externally that we can do something better, we are more than willing to adjust what we do. We have items that we track for the legislature, and we have added to them internally. We are trying to ensure that we are tracking the correct information.

The budget for the OSHA review board was discussed.

10. Safety Consultation and Training Section

CAO Todd Schultz gave a brief overview of the SCATS program and a summary of the services provided in the past year. He also referred to information in the binder about the Safety and Health Practitioner Certificate Program. Complaints from employees from VPP and SHARP companies were discussed. Todd Schultz also referred to the press release information in the binder.

11. Workers' Compensation Section

CAO Charles Verre gave a summary of the year. The Medical Fee Schedule was updated in February 2018 and February 2019 as required by the statute, and we were able to make these updates without going through the regulation process. Charles Verre discussed the new computer system, CARDS. This system enhances communication internally and externally. We also hosted the annual Workers' Compensation Educational Conferences in 2018 and 2019. Both conferences were attended by approximately 300 people. The next conference will be held September 24th and 25th, 2020.

Charles Verre discussed the International Association of Industrial Accident Boards and Commissions (IAIABC). We are on some committees now, work with other states, and are recognized for our work. The Western Association of Workers' Compensation Boards (WAWCB) meets annually as part of the IAIABC, and our representatives there meet as part of that group.

Charles Verre discussed the actuarial annuity table which is used to calculate the lump sum entitlements for injured workers, updates for mileage reimbursement rates for cost of transportation, and maximum average monthly wage for Workers' Compensation. He also discussed the section's public outreach. We educate the public to try to eliminate violations.

Charles Verre also discussed vacancies, and the difficult of retaining staff. He would like the process of hiring at a higher rate to be faster, and less challenging.

12. Write-off Recommendations

Charles Verre discussed the write-off recommendations, and the process of getting them approved. The total write-off recommendation is \$1,307,414.73. This represents write-offs for Workers' Compensation Section fines and penalties, Uninsured Claims Account, and for OSHA. Ray Fierro mentioned that these were seen by the Controller's office before this meeting.

Charles Verre mentioned that many people come to Las Vegas, never intending to follow the rules. They open a business with the intention of making as much money as they can, and get out, or move down the street and change their name.

Bill Spiegel brought up a concern about write-offs for companies that are still active. Jess Lankford responded that if they are on the list it's because there hasn't been any active payment in the last four years. When employers are in default on their payments, the administrative fine is transferred to the Controller's office. There is a statute that says OSHA can't recover an administrative penalty after four years. Paul McKenzie stated that the Controller's office is supposed to notify the Secretary of State and all other entities for licensing so the company cannot renew its business license. He stated that there should be no active employers on this list. Chuck Verre mentioned the possibility that the Controller's office may not know that they should be sending this information to the Secretary of State to prevent businesses from renewing their licenses. Jess Lankford also informed the board members that OSHA notifies the Contractor's Board when an employer defaults on payment.

Bill Stanley discussed employee misclassification. He also asked if involving the Attorney General might be helpful in recovering payments.

Paul McKenzie stated that we need to make sure a business license or contractor's license isn't active before we write off their debt.

Rusty McAllister stated that he looked up some of these companies on his phone, and found that they are currently active. He suggested that we find a way to see which businesses are still active, and work with the Controller's office and Secretary of State to revoke or suspend their licenses until paid. We should pursue the companies that are still active.

Paul McKenzie motioned to give the controller's office an opportunity to collect the debt, and pursue the provision of the NRS that forbids employers from holding a business license in this

state if the debts aren't paid. Bill Spiegel seconded the motion. There was a unanimous vote, and the motion was carried.

13. Agenda items for next scheduled meeting

Paul McKenzie asked if we can get a member from the Controller's office here for the next meeting. Ray Fierro responded that he would talk to the Director to see if we can have someone from the Controller's office attend.

14. Public Comment related to January 1, 2019 agenda items

Bill Stanley asked what public meeting laws we are subjected to. Don Smith responded we are subject to quorum and notification.

15. General Public Comment

No general public comment.

16. Adjournment

Meeting adjourned at 1:09pm.