

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

March 9, 2022
Via teleconferencing and audio conferencing (WebEx)

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

On March 9, 2022, a meeting of the Nevada Occupational Safety and Health Review Board was convened.

The Board elected to exercise its option under AB 253 in light of the COVID-19 pandemic to conduct the meeting of the Board exclusively by use of a remote technology system. There was no physical site available for the conduct of this meeting. The public was advised that the Complainant, Respondents, Witnesses, Attorneys, Board members, and legal counsel and any other participants in the meeting would be participating by electronic means.

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 at approximately 9:00 a.m., on March 9, 2022, and called Item 1, Roll Call.

1. Roll Call.

Those present at the meeting were Board Chairman Rodd Weber, Vice Chairman William Spielberg, and Members Frank Milligan, Jorge Macias and Scott Fullerton. As all of the members participated in the meeting, including representatives of labor and management, a duly constituted quorum was present to conduct the business of the Board.

Present on behalf of the Board was Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Also in attendance was Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations.

The meeting of the Board was conducted by video conferencing. The public had the option of participating also by telephone. The hearing on this date was reported by Court Reporter Kathy Jackson, who appeared virtually.

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 or amended through Governor Sisolak's Emergency Directives and AB 253. 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 <http://dir.nv.gov/Meetings/Meetings>

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

2. Public Comment.

Chairman Rodd Weber called this item to be heard. No public comment was offered at this stage in the proceedings. Board Legal Counsel advised that his office had received no written public comment as of the commencement of the meeting.

3. Contested Case Hearings.

Board Chairman Weber called this item to be heard. He requested Board Legal Counsel to set the record with respect to the contested hearings before the Board on this date. Board Counsel advised that all items scheduled for contested hearing on this date were vacated for various reasons such as settlement, newly discovered evidence, and the like, except for LV 22-2135, CGG Enterprises, LLC dba World's Best Corndogs, and LV 20-2027, Compass Equipment Services of NV, LLC. These matters had not been settled and were scheduled for hearing on the contested docket, commencing this date, March 9, 2022.

Chairman Weber called LV 22-2135, CGG Enterprises, LLC, dba the World's Best Corndogs, for hearing on the contested docket, for March 9, 2022. Appearing on behalf of the complainant, the State of Nevada, was Salli Ortiz, Esq., legal counsel for the Division of Industrial Relations. Appearing on behalf of CGG Enterprises was Cody Graham, a lay advocate

and manager of CGG Enterprises. This State called two witnesses, Elizabeth Meza and Nick LaFronz, district manager for State OSHA. Cody Graham called no witnesses, relying upon the exhibits submitted by the State and the cross-examination of the State's two witnesses. The State had Exhibit 1, pages 1 through 69, and Exhibit 2, pages 70 through 84 admitted into evidence. CGG Enterprises offered no documents for admission into evidence. At the conclusion of both parties' presentations of their case in chief, and the cross-examination of their respective witnesses, they gave closing arguments. The Board then, moved immediately to decide this matter, which involved the failure of the proprietor to require staff to wear face masks, though work involved interaction with the public. At the conclusion of the deliberations, it was moved by Scott Fullerton, seconded by Frank Milligan, to affirm the citation in this case including the sanctions levied in the amount of \$2,926. **The Motion was adopted.**

Vote: 5-0.

Chairman Weber then called the second and only other contested case to be heard, LV 20-2027, Compass Equipment Services of NV, LLC. Salli Ortiz, Esq., appeared on behalf of the State for the complainant. Ray Bellamy a non-lawyer, and one of the managers of the respondent, appeared on behalf of the respondent in defense of the claim. The State identified two witnesses to testify, Philip Gillett, a crane operator employed by Compass Equipment, and Nicholas LaFronz, holding the title of District Manager for Nevada OSHA.

This case involves an alleged failure by Compass Equipment to require a crane operator supervisor to have or hold a 30 hour OSHA training certificate, as required by NRS 618.987, section 2. The State offered and had admitted into evidence Exhibit 1, pages 1 through 47, and Exhibit 2, pages 48-60. The respondent, through Mr. Bellamy, offered no exhibits for admission into evidence but intended to rely upon the referrals from the Union, introducing the three crane operators that the Union referred to Compass Equipment for work on the Circa job. Philip Gillett was one of the crane operators referred by the Union to the respondent employer, Compass Equipment. The State alleged that the Mr. Gillett was a supervisor on the job but lacked the mandatory OSHA 30 hour supervisory card, in violation of NRS 618.987(2).

Ms. Ortiz called Mr. Gillett to testify. She also called Mr. LaFronz to the stand to testify. Mr. Bellamy cross-examined briefly Mr. Gillett, a current employee of Compass Equipment. He also cross-examined Mr. LaFronz. Following the testimony of Mr. Gillett and Mr. LaFronz, the State rested. Mr. Bellamy elected not to go forward and present any additional evidence or call any witnesses or produce any documents and records, not otherwise already discussed in this case. He, therefore, rested. Closing arguments were then heard by both Ms. Ortiz and Mr. Bellamy.

At the conclusion of oral argument, the Board immediately took this case under submission and deliberated. It was then moved by Frank Milligan, seconded by Scott Fullerton, to vacate the citation in this case and to dismiss the matter with prejudice with no fine being assessed. **Motion Adopted.**

Vote: 5-0, the case was dismissed with prejudice.

The Chairman then moved to consider the Administrative matters on the Agenda.

Item 4(a). Approval of January 12, 2022, minutes.

Chairman Weber next called item 4(a), to be heard, namely, consideration of the minutes for the Board meeting of January 12, 2022.

It was moved by William Spielberg, seconded Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 5-0.

Chairman Weber then called to be heard Item 4(b), the review of contested case settlements, motions, draft decisions, or procedural issues pending on the status report, for approval and issuance of final orders:

The first matter to be heard was Item 4(b)i. RNO 21-2070, Basalite Building Products, LLC. Based upon newly discovered evidence the State withdrew its complaint. It was moved by William Spielberg, seconded by Frank Milligan, to accept the withdrawal and dismiss this case. **Motion adopted.**

Vote: 5-0.

Chairman Weber then called Item 4(b)iii, to be heard, RNO 21-2069, PKVINO dba Vino 100. Board counsel advised that he had received correspondence from Joey Gilbert, Esq., legal counsel for Vino 100. He was unable to remain on line because of conflicts in his schedule. He wanted to be present when this matter was considered by the Board. Accordingly on the recommendation of Board counsel, Vino 100 was continued to be placed on the agenda for the April 2022 meeting of the Board.

Board Chairman then called Item 4(b)ii, to be heard, LV 21-2110, Best Buy Shutters, LLC.

This matter consisted of a host of violations, including a repeat violation of Best Buy Shutters.

Citation 1, Item 1, is a Repeat-Serious violation, with a proposed fine of \$6,169. Citation 2, Item 1, is a Serious violation, with a proposed fine of \$4,164. Citation 3, Item 1, is a Regulatory violation, with a proposed fine of \$390. The Total fines asserted by the State in this matter was \$10,723.

Best Buy Shutters voluntarily withdrew its contest of the complaint and Nevada OSHA received both the withdrawal and a check in the amount of \$10,723, the full amount of the fines as levied. The matter is, therefore, moot, and leaving no reason to proceed any further, the case is to be withdrawn and dismissed.

It was accordingly so moved by Scott Fullerton, seconded by William Spielberg, to accept the withdrawal and dismiss the case with prejudice. **Motion adopted.**

Vote: 5-0.

Chairman Weber then called to be heard, the general administration and/or procedural issues, Item 4(c), beginning with (i), general matters of import to Board members.

This item raised the discussion of Board travel, particularly, how the Board travel is to be arranged and secondly, what to do and how to handle travel arrangements when the price of a hotel room considerably exceeds the GSA rates for hotels, the limit that the State will advance in order to defray the costs of travel. William Gardner was asked for comment and assistance. He indicated that the State would provide the GSA contact information to be used for Board members to defray the costs of travel. As the Board members are not employees of the State, the question is how this can possibly work, given that they have no identification cards as well, establishing their association with the State as Board members of State OSHA. This is a work still in process.

Board Chairman called to be considered Item 4(c)(ii) old and new business. There was no discussion under this category.

The Chairman called Item 4(c)(iii), to be heard, a discussion of the Board's Status Report. Board Counsel presented to the Board a status report on every case that was currently pending as of February 23, 2022. As of that date, there were 172 cases pending before the Board. A major portion of the open and pending cases consisted of 54 matters that have been settled, withdrawn/resolved but the Board is awaiting from DIR the documents confirming the settlements. And 39 cases were complaints/summons that have been filed but no answer received. The Board is awaiting here, also, action from the State to press forward with the complaint or file a motion for a default judgment. These total 93 cases under these two headings. The Board will be given an update of this report on a monthly basis when the Board meets.

Chairman called Item 4(d), the schedule of hearings on pending cases. Board counsel pointed out that the hearings set for April 13 and 14, 2022 and May 11 and 12, 2022 are in person as opposed to virtual hearings. Board counsel advised, however, it is possible that he will still not be able travel because of his back surgery for the April 13 and 14, 2022 meeting of the Board. The Board then discussed the prospect of doing a hybrid meeting with Board counsel allowed to appear virtually as opposed to in-person. Board counsel is deferring the decision upon the nature of his participation for another 10 days to 2 weeks to allow for the healing process to get a handle on the situation. It is anticipated, however, that commencing the May 11 and 12, 2022, all meetings will be in person rather than virtually, given the procedural and logistical nightmare that is associated with virtual hearings and the handling of exhibits of the parties.

5. Public comment.

There was no public comment and Board counsel advised that his office had not received any additional public comment during the course of the meeting with the exception of Mr. Gilbert's issues with the timing of the hearing of the Vino matter.

6. Adjournment.

It was moved by Frank Milligan, seconded by Scott Fullerton to adjourn the meeting.
Motion adopted.

Vote: 5-0.


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

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