

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

August 11, 2021
***Via* teleconferencing and audio conferencing (WebEx)**

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

On August 11, 2021, 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 and conducted 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 to order the meeting of the OSHA Board of Review for August 11, 2021, at approximately 9:10 a.m.

1. Roll Call.

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

Also present were Salli Ortiz, Esq., counsel to the State of Nevada OSHA, and Board of Review counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Various members of the public joined or departed from the meeting throughout its course.

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.

2. Public Comment.

Chairman Weber called this matter to be heard. There was no public comment offered at the outset of the meeting. Board Legal Counsel advised that his office had received no written comment from the public in advance of the meeting.

3. Contested Hearings.

(1) LV 18-1939, Olson Precast Co.

Chairman Weber called this item next to be heard. First on the Agenda for contested hearings was LV 18-1939, Olson Precast Co. This was a fatality case, plead as a willful and plainly indifferent violation by the employer. After debating and deliberating on this matter, it was moved by Frank Milligan, seconded by William Speilberg to affirm Citation 1, Item one as a serious violation, but not as a willful or plainly indifferent violation, with a serious fine of \$7,000. **Motion adopted.**

Vote: 4-1 (Weber).

Chairman Weber advised that he voted no on the motion because he believed that the State had proven a willful or plainly indifferent violation. Upon affirming the Citation 1, Item 1, the penalty of \$7,000 was assessed as distinguished from the \$70,000 fine plead by the State, if the matter was affirmed as a willful or plainly indifferent violation. This vote concluded the sole remaining item of business for LV 18-1939.

(2) LV 18-1941, Brady Linen Services, LLC.

Chairman Weber then called LV 18-1941, Brady Linen Services, LLC., to be heard. Citation 1, Item 1, was plead as a willful or plainly indifferent violation. After deliberating Citation 1, Item 1, it was moved by Frank Milligan, seconded by Jorge Macias, to affirm Citation 1, Item 1, as stated, meaning a wilful or plainly indifferent violation was upheld resulting in a fine of \$70,000 (10 times \$7,000). **The motion was adopted.**

Vote: 5-0.

The Board then took up Citation 2, Item 1, plead as a serious violation, with a fine of \$7,000. It was moved William Speilberg, seconded by Frank Milligan to affirm Citation 2, Item 1, in the amount of \$7,000. **Motion adopted.**

Vote: 5-0.

The Board then took up Citation 2, Item 2, a serious violation. It was moved by Frank Milligan, seconded by Jorge Macias, to affirm Citation 2, Item 2, in the amount of \$7,000. **Motion adopted.**

Vote: 5-0.

(3) LV 20-2003, M.J. Dean Construction, Inc.

Chairman Weber then called to be heard LV 20-2003, M.J. Dean Construction, LLC. Appearing on behalf of the State was Salli Ortiz, Esq., legal counsel to the State of Nevada OSHA. Appearing on behalf of M.J. Dean was Jeff Kent, a non-attorney, and safety director at M.J. Dean Construction, Inc. Exhibits were entered into evidence. Testimony was presented by the State. The State's witnesses were cross examined by Mr. Kent. The State rested. M.J. Dean presented no witnesses in defense, relying upon oral argument and the cross examination of the State's witnesses. Closing arguments were heard, after which the matter was plead as a serious offense, discounted to the amount of \$6,300, giving due consideration to the probability, severity and extend of the violation, the employer's history of previous violations, and the employer's size and good faith.

Before deliberating on M.J. Dean, Mr. Kent, for M.J. Dean, terminated the connection into the meeting by Webex. Ms. Ortiz remained connected through Webex during the course of the deliberations. She said nothing and was asked nothing further on the case as the matter was concluded with the closing arguments

After debate and deliberation on the matter as heard before the Board, it was moved by Scott Fullerton, seconded by Jorge Macias, to affirm the one citation as pled in the amount of \$6,300. **Motion adopted.**

Vote: 5-0.

This concluded the contested hearing portion of the matters before the Board under the contested hearing section as the remaining matters under this heading were either settled or continued to a later date. All the viable contested matters pending on this date were accordingly heard and resolved by the Board.

4. Administrative Meeting:

The Board Chairman, then, convened the administrative portion and called Item 4(1)

1. Approval of the previous Review Board minutes for June 9, 2021.

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

Vote: 4-0-1. (Fullerton abstaining as he was not a member of the Board on June 9, 2021, and, therefore, did not participate in the meeting).

Chairman Weber then called item 4(2) to be heard.

This Item involved whether to approve the withdrawal of citation RNO 20-2031, Broken Arrow Communication, Inc. Board Chairman asked Board Counsel to explain why this matter was here before the Board. Board Counsel advised that at a previous hearing, the Board declined to consider approval of the Broken Arrow Communication, Inc., matter, for the want of information presented to justify Board action on the application to approve withdrawal of the citation. The State has now provided an explanation for the decision to withdraw the citation. Salli Ortiz, Esq., offered an explanation of the decision to withdraw this matter which is a fatality case. The decedent's family was notified of the hearing. It was moved by Frank Milligan, seconded by William Spielberg, to approve the State's unilateral withdrawal of this citation, RNO 20-2031 and to authorize the Chairman to execute an order affirming the withdrawal. **Motion adopted.**

Vote: 5-0.

Chairman Weber then called Item 4(3), General administration and/or procedural issues for consideration.

- i. General matters of import to Board members.

There was no discussion under this heading.

- ii. Old and New Business.

Chairman Weber used this opportunity to welcome and to recognize Scott Fullerton to the Board, as the Board's newest's member. He also acknowledged the recent appointments of William Speilberg and Jorge Macias. There was no other old or new business discussed.

- iii. Discussion of Board legal counsel's compensation under his contract.

This matter was discussed briefly. Chairman Weber stated that there was concern because of an exchange of correspondence indicating that Board Counsel had agreed to certain

representations when he had not. Victoria Carreon then appeared and explained that because of budgetary/administrative procedures the contract had to be shortened to conclude on June 30, 2022, at which time a new contract will have to be entered into with Mr. Zeh. Mr. Zeh then advised that he did not want any further discussion of this issue at this time. The discussion of the contract was accordingly concluded.

iv. Independent Status of the Board.

Chairman Weber then called Item 4(3)(iv.) for discussion, the Independent status of the Board apart from the State of Nevada. Frank Milligan asked that the Board be refreshed as to why this had to appear on the Agenda before the Board. Board Counsel and Board Chairman both explained that this arose from a discussion at the previous Board meeting where Board members were referred to as employees of the State. Board Counsel and Board Chairman explained that this could not be as the Board is deciding cases involving the State, when appearing as the complaining party. A serious conflict of interests situation would be presented if the Board members were considered employees of the State. It was important to make clear, therefore, that when the Board members are acting to decide and dispose of cases before the Board involving the State of Nevada, Board members are not employees of the State and subject to direction by the State in the disposition of these matters. This matter was, therefore, before the Board on this date to make a clear record of the Board's independent status, apart from the State of Nevada.

v. Post Pandemic hearings.

Board Chairman Weber then called Item 4(3)(v.) to be discussed, post pandemic, whether hearings may continue to be conducted remotely and if so, under what circumstances. It was pointed out that face masking in the State may well continue beyond September 8 and 9, 2021, the date of the next meeting of the Board, which is to be held in Las Vegas. Victoria Carreon pointed out that at present, face masks are required in Clark County as the County has been designated as a high risk area for contracting the virus.

Board Counsel pointed out that it is impossible to determine at this moment whether face masks will be required on September 8 and September 9, 2021, the date of the next Board meeting. Therefore, it is important for the Board to decide at this date whether the hearings scheduled for September 8 and 9, 2021, are to be conducted on a virtual basis, again. Parties need to be notified about the nature of the hearing (virtual or in person) and arrangements need to be made for the exchange of exhibits in advance of the hearing, depending upon whether the matter is to be heard virtually or in person. It was because of the cumbersome nature of conducting a hearing through face masks that the Board had previously decided that the hearings on this date be conducted on a virtual basis.

It was moved, therefore, by Chairman Weber, seconded by Frank Milligan, to conduct the September 8 and 9, 2021, meeting of the Board on a virtual hearing basis. **Motion adopted.**

Vote: 5-0.

(4) Schedule of hearings on pending cases, calendar and status report.

There were no changes to the schedule of hearings on pending cases.

5. Public Comment. Chairman Weber, again, asked for public comment at this stage in the proceedings. There was none.

6. Adjournment.

Board Chairman Weber called this item to be heard. It was moved by Frank Milligan, seconded by Scott Fullerton, to adjourn the meeting and to cancel the second day of the hearings as the Board had concluded all of the business listed on the Agenda for this date. **Motion adopted.**

Vote: 5-0.


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

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