

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

May 11, 2022

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

On May 11, 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 and conduct the May 2022 meeting of the Board on a HYBRID basis. The parties, public and participants had the option of participating in person or by means of a remote technology system. Participation in person was by attendance at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

If the election was to participate by electronic means, participation was only through the use of the remote technology system deployed by the Board of Review. Accordingly, joinder in the meeting by electronic means was through the Webex Access portal.

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 Hybrid meeting of the Board of Review for the State of Nevada Occupational Safety and Health administration proceeding. The meeting originated from the State OSHA offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

Chairman Rodd Weber called the meeting to order at approximately 9:02 a.m., on May 11, 2022.

1. Roll Call.

Present by video was Chairman Rodd Weber, present in person were William Spielberg, 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.

Also present by video was Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations, appeared personally.

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 Weber called this item to be heard. There was no public comment either

expressed at the meeting and Board Counsel advised that his office had received no written public comment via electronic means, or otherwise, prior to the start of the meeting.

3. Contested Case Hearings.

Chairman Weber called announced that all of the contested cases had been vacated for hearing on this date, except (g) Greystone Nevada LLC, Docket No. LV 21-2130. He, therefore, called this item to be heard. No one appeared at this time either in person or via electronic means. Therefore, Chairman Weber called Item 4 (a) to be heard.

4. Administrative Meeting:

- (a) Approval of the previous Review Board meeting minutes of April 13/14, 2022.

It was moved by Scott Fullerton, seconded by William Spielberg, to approve the minutes 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 2-2032, Helix Electric, Inc., a fatality.

Board Counsel read the proposed resolution and settlement into the record for this matter, for the Board to then decide whether to accept or reject the proposed disposition of the case. Jorge Macias advised that he would be abstaining from this case because the employer in this case was his employer, as well. It was moved by Frank Milligan, seconded Scott Fullerton, to accept the settlement as proposed by the parties in this matter. **Motion adopted.**

Vote: 4-0-1. (Macias abstaining)

At this time, David Selden, Esq., of Messner Reeves, LLP, appeared by electronic means advising that he had been present throughout but could not make contact electronically with the Board to establish his appearance. He is co-counsel with Julie A. Peace, Esq., on the Greystone Nevada, LLC matter. Mr. Selden explained that he had received a text message from his co-counsel advising that Greystone Nevada, LLC, will accept the counteroffer from the State to settle this case. Ms. Ortiz, counsel for the State on Greystone Nevada, LLC, Docket No. LV 21-2130, matter advised that Greystone had accepted the State's counteroffer, thereby, confirming Mr. Selden's representation that this matter was settled.

The matter having been settled, it was removed from the contested docket for this date. Mr. Selden stated further that Greystone Nevada, LLC, was an affiliate of Lennar Homebuilders, a homebuilding company that constructs homes throughout the country. Lennar Homebuilders has an excellent safety record and has devoted considerable resources to sound safety practices. He thanked the State for its professionalism in this matter. And then he excused himself from further participation in this matter. In light of the accepted settlement of the case, Board

Chairman then moved back to the Administrative portion of the Agenda for this date calling next to be heard under the Administrative Meeting 4(b)(ii).

- ii. LV 21-1059, New Castle, LLC fka New Castle Corp., dba Excalibur Hotel and Casino.

Board Counsel read the proposed settlement into the record. The Board considered it the proposed settlement and upon a motion of William Spielberg, seconded by Frank Milligan, moved to approve the settlement as presented. **Motion adopted.**

Vote: 5-0.

- iii. RNO 21-2016, LSP Products Group, Inc.

Board Counsel presented the settlement proposal to the Board and upon a motion of Frank Milligan, seconded by Scott Fullerton, moved to approve the settlement as presented.

Motion adopted.

Vote: 5-0.

- iv. RNO 21-2078, Eureka Hospitality Management, Inc., Jeffrey J. Bartley dba Eureka Gold Country Inn.

Board Counsel presented the proposed settlement to the Board. It was moved by Scott

Fullerton, seconded by Frank Milligan, to approve the settlement as presented. **Motion adopted.**

Vote: 5-0.

Chairman Weber then called Item 4(c) General administration and/or procedural issues.

i. General Matters of import to Board members.

There was no discussion under this item.

ii. Old and New Business.

There was no discussion under this item.

iii. Discussion of the Board's Status Report.

As evidenced by the four old cases that were reviewed and approved on this date, Board Counsel reported that progress is being made on working down the older cases that had been pending. There will be another six cases, old cases for review and approval on settlement at the June meeting of the Board in Reno.

iv. Consider Whether to Increase the Number of Monthly Hearings.

A discussion took place about the need to add an additional day of meetings by the Board

each month in order to get a handle on back log of cases. Board Counsel advised that it might be premature to do that at this time because there has been a drop off in new cases to be heard so, therefore, the ending of July and August and possibly September, those dates could be used to consider additional older cases for review and approval of cases to make a dent in the back log of old pending cases. The Board agreed that the discussion of adding an additional day or two each month to consider older cases might be premature and tabled the discussion.

Chairman Weber then called Item 5 to be heard, Public Comment. There was no public comment offered at the meeting and no additional public comment had been received by Board Counsel's office during the course of this meeting.

6. Adjournment.

Chairman Weber called this matter to be heard. Ms. Ortiz pointed out to the Board that there was still the Oral Argument in the Panasonic case and the status hearing in the Las Vegas Dragon Hotel case on the Board's Agenda for 1:30 p.m. on this date. As these matters were on the Agenda for this date, Ms. Ortiz thought that it would be premature to adjourn the meeting until these matters were heard this afternoon. The motion to adjourn by Frank Milligan was accordingly withdrawn. The Board recessed until 1:20 p.m., this afternoon.

Continuation of the Board of Review hearing for May 11, 2022 and if necessary May 12, 2022. The Board reconvened at 1:20 p.m., on May 11, 2022. No business was conducted as the Board awaited the 1:30 p.m. hour, at which time oral argument was to be heard on the pending motions.

At 1:30 p.m., Chairman Weber called roll call. Those members present at the State's offices were Vice-Chairman, William Speilberg, and members Frank Milligan, Jorge Macias and Scott Fullerton. Also present for the Board meeting by electronic means was Board Chairman Rodd Weber. Present also by electronic means was Board Legal Counsel Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Salli Ortiz, Esq., Division Counsel appeared personally at the State offices on behalf of the Complainant in these matters.

Board Chairman called for Public Comment. There was no Public Comment either electronically through Board Counsel's office or at the hearing.

Chairman Weber then called to be heard the motion to take depositions filed by Panasonic Corporation of North America, Docket No. RNO 22-2138. This matter was scheduled to be heard for one hour upon Respondent's motion to take two depositions. Micah Dickie, Esq., appeared on behalf of the Respondent and movant in this matter. Salli Ortiz, Esq., appeared on behalf of the State, the Complainant and responding party. The Board allowed one hour for oral argument, half an hour each side, with each party given the option to reserve some of their time for rebuttal. Mr. Dickie went first as the movant acknowledging that special circumstances are required before depositions may be conducted by a party. It was Mr. Dickie's position, however, that special circumstances existed to allow the Respondent to take the deposition of two witnesses. They are potential witnesses on behalf of the State in this matter. He felt it would be extremely prejudicial, counter productive and un-economical if Respondent was not allowed to depose the two witness, that the Respondent would like to depose. Those witnesses were Jared Mitchell and Joe Reeds.

Ms. Ortiz then argued against the motion, stating that special circumstances are required before a party may take depositions in matters before the Board. Board counsel quoted for the Board NAC 618.797(1), which is the controlling regulation for taking depositions. There it states: "Except by special order of the Board, discovery depositions of parties, interveners or witnesses are not allowed." In Board Counsel's opinion as a matter of law, special circumstances are required before a party may take the deposition in a case pending before the Board. Jared Mitchell and Joe Reeds were the two individuals sought to be deposed by Respondent.

The Board took the matter under deliberation. After discussion, it was moved Scott Fullerton, seconded by Frank Milligan, to deny the motion to take depositions. **Motion adopted.**

Vote: 5-0.

After a brief delay, the Board was able to locate counsel for Las Vegas Dragon Hotel, LLC, dba Alpine Hotel, Docket No. LV 21-2094, in order to commence at approximately 2:10 p.m., a hearing on the Respondent's status report in the Las Vegas Dragon case. Steven P. Jaffe, Esq. and Taylor R. Anderson, Esq., of Hall, Jaffe & Clayton, LLP, appeared on behalf of the Respondent. Salli Ortiz, Esq., Division Counsel, appeared on behalf of the State.

The status conference was called by the Board, as this matter arises out of a fire resulting in the death of six individuals, including one employee of Respondent, the Las Vegas Dragon Hotel. Civil litigation is pending and criminal charges have been brought against Adolfo Orozco Garcia arising out of the fire and the incident which, thus, also gives rise to these charges before

the OSH Board. This case was first filed on November 10, 2020. The case has been pending now for approximately one and a half years, with no prospect at the moment for when the matter can be heard. The Board is facing, without additional information, an indefinite series of continuances in derogation of the Board's interest in moving cases along and having them heard in a timely manner.

Mr. Jaffe spoke first on behalf of the Respondent, advising the Board that there is serious civil litigation arising out of the same transaction or occurrence, namely, the fire, that also gave rise to the OSHA claims against the Respondent. Mr. Jaffe stated that criminal charges are also pending against Mr. Orozco on the same conduct giving rise to the OSHA matter. Based upon Fifth Amendment self-incrimination grounds, Mr. Jaffe wanted this case continued indefinitely. He also wanted the matter continued at least through the fall as a result of the criminal matter. He stated that there was mediation scheduled in the civil case in July 2022. Board Counsel pointed out that he knew of no authority for the Board to continue matters indefinitely because of the possibility that civil litigation may arise out of the same transaction or occurrence giving rise to an OSHA proceeding.

Board Counsel pressed Mr. Jaffe on the criminal side, wherein Mr. Jaffe stated on the record that if Mr. Orozco were called to testify in the OSHA matter, his testimony would be critical to Respondent's defense of the OSHA citations. Therefore, if Mr. Orozco exercised his Fifth Amendment rights against self incrimination and did not testify on the matter before the Board, Respondent's defense would be substantially compromised. Ms. Ortiz expressed no opinion on this matter, not objecting if the matter were to be continued.

The Board deliberated. It was initially moved by Scott Fullerton, seconded by William Spielberg, to continue this case on the merits until August 2022 and to provide quarterly report then for the Board to consider.

Board Counsel clarified that this motion was not predicated upon its concern for the corresponding civil case, as a grounds for continuing the matter, given that nearly every OSHA case has a civil litigation side to it which would delay nearly every case before the Board. This could not be grounds for continuing a case, as a general proposition. Pending the vote on this motion, Frank Milligan stated that he had a problem continuing this case for reasons related to companion civil-side litigation. The Fullerton motion, then, failed in a vote of 0 in favor and 5 against. Frank Milligan then moved to set this case for hearing a 9:00 a.m., on August 10, 2022, and that if Respondent, Las Vegas Dragon Hotel, LLC, wanted a continuance at that time, any such motion must be made on or before August 3, 2022. Jorge Macias seconded the motion.

Motion adopted.

Vote: 5-0.

This concluded the hearings scheduled on the Agenda for this date.

Public Comment. Board Chairman called for Public Comment. There was no public comment originating at the meeting nor via electronic means through Board Counsel's office.

Adjournment. Board Chairman called this matter to be adjourned. It was moved by Frank

motion, Frank Milligan stated that he had a problem continuing this case for reasons related to companion civil-side litigation. The Fullerton motion, then, failed in a vote of 0 in favor and 5 against. Frank Milligan then moved to set this case for hearing a 9:00 a.m., on August 10, 2022, and that if Respondent, Las Vegas Dragon Hotel, LLC, wanted a continuance at that time, any such motion must be made on or before August 3, 2022. Jorge Macias seconded the motion.
Motion adopted.

Vote: 5-0.

This concluded the hearings scheduled on the Agenda for this date.

Public Comment. Board Chairman called for Public Comment. There was no public comment originating at the meeting nor via electronic means through Board Counsel's office.

Adjournment. Board Chairman called this matter to be adjourned. It was moved by Frank Milligan, seconded by Scott Fullerton, to adjourn the meeting.

Vote: 5-0.

Dated this 8th day of June, 2022.


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

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