

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

**July 6, 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 July 6, 2022, a special 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. The public was advised that 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 special meeting of the Board of Review for Nevada State OSHA at 1:00 p.m., on July 6, 2022.

**1. Roll Call.**

Board members participating by video conferencing were Chairman Rodd Weber, Secretary William Spielberg, and members Frank Milligan, Jorge Macias and Scott Fullerton. As all of the members of the Board were participating in the meeting including two members representing labor and two members representing management, a quorum was present for the Board to conduct its business.

The Chair recognized that Kathy Jackson was present to record these proceedings whereupon Ms. Carreon complained that such expenditures like the compensation to pay Ms. Jackson must approved by the State in advance, that the State had not been advised in advance that Ms. Jackson would present report these proceedings. The Chairman stated that at the last meeting of the Board when the prospect of a special meeting was discussed, the Board wanted Ms. Jackson present to report these proceedings and that, therefore, she should be paid by someone. Board Chairman then recessed briefly to consult with Board Legal Counsel.

Upon reconvening, Board Legal Counsel advised that Ms. Jackson will be paid one way or the other and that it will be important that these proceedings be fully transcribed and reported.

Also present was the Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., and Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations. Appearing, amongst others by video conferencing, was Victoria Carreon.

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  
4600 Kietzke Lane  
Building F, Suite 150  
Reno, Nevada 89502

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.**

No public comment was offered in response to the call by the Chairman and no written public comment had been received prior to the commencement of the meeting.

**3. General Administration and/or procedural issues.**

(a) Matters of import to Board members.

There were none.

(b) Old and New Business.

Under this item, Board Chairman Weber asked Board Counsel about the case load for the July meeting of the Board commencing on July 13, 2022. Board Counsel advised that the Agenda was heavily scheduled for the July meeting of the Board commencing with deliberation of the Sofidel matter. Sofidel is a highly contentious case consuming two volumes of transcripts which the Board members have and should review. Also the first contested case on the matter was Las Vegas Paving, a fatality case. Las Vegas Paving was a companion case to Olsen Concrete. Olsen Concrete was highly contested and it is anticipated that Las Vegas Paving will consume the same amount of time for the Board to hear and decide.

When discussing the agenda for the July 2022 meeting, Board Chairman indicated that Board Counsel would be appearing by video conferencing. Member Scott Fullerton indicated that he may appearing by video conferencing because he may still be in quarantine. The remaining members of the Board will be appearing in person.

- (c) Discussion about Board Legal Counsel's Contract, Select and Employment of Board Legal Counsel.

Board Chairman Weber called this item to be heard. He began by reading into the record a proposed motion to continue to employ Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., as Board legal counsel. The proposed motion is stated as follows:

"I move the Nevada Occupational Safety and Health Review Board (Board) retain Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., to serve as legal counsel pursuant to the specific statute, NRS 618.585, for a contract term of at least two years at the hourly rate of \$230.00 per hour commencing upon the expiration of the current legal counsel contract. The motion is based upon Mr. Zeh's extensive experience and effective specialty in the field of Occupational Safety and Health Law, practice and procedure. Mr. Zeh's administrative law background makes him uniquely qualified for the legal counsel position, all as more particularly described in his professional resume incorporated in this motion (attachment).

Pursuant to NAC 333.150 the foregoing qualifications meet the criteria for exception as well as designation of sole source contractor.

I further move that should there be any delay in the implementation of Mr. Zeh's contract beyond the existing term, for any reason, his current counsel contract shall be extended for the delay time required, if any, up to 90 days, subject to additional extensions if/as needed. This contract extension provision is intended to maintain continuity of Review Board operations for the prompt hearing, adjudication, and processing of Board business to responsibly foster the statutory mandate under NRS Chapter 618 and avoid interruption of the appellate process. . . ."

Upon the conclusion of the reading of the proposed motion, Jorge Macias moved to adopt the motion as stated by the Chairman in the record without further discussion, Scott Fullerton, seconded the motion. The Board voted. The motion was adopted unanimously on a vote of 5 in favor and 0 against.

Immediately thereafter, Victoria Carreon, the Administrator, asked to be heard. While the discussion that followed continued for some time, in a nutshell, she stated that the budget people from the Governor's office and the Office of the Attorney General had taken the position that the budgeting process and the execution of contracts rests with the State, not the Board and importantly, it is the State who will select legal counsel for the Board of Review, despite the statutory authorization that the Board has, to hire its own legal counsel. *See*, NRS 618.585. While the State may consider the Board's choice of legal counsel, that choice is not binding on the State and the State will decide who will be the Board's legal counsel. The State may take into consideration the Board's selection but the choice of the Board Legal Counsel is the State's, not the Board's.

Board members made clear they disagreed. Such a position would create a conflict of interest and the unacceptable situation where legal counsel chosen by the State would be on both sides of contested hearings before the Board.

During Ms. Carreon's discourse, she cited sections of the Nevada Revised Statutes including NRS 232.520(3) and NRS 232.670(2) as statutory authority trumping the Board's right to employ legal counsel of its choosing. She claims these statutes take away the Board's authority as the final decision maker as to Board legal counsel. Board members disagreed, pointing to NRS 618.585(2) where the Board, not the State, may employ legal counsel to advise the Board.

Ms. Carreon told the Board that there were two applications for the position of Board legal counsel. It was unclear whether that means there is a total of three, including the incumbent counsel for the Board or a total of two including the incumbent counsel of the Board. Board members wanted to review the other application(s). It was Ms. Carreon's position that she didn't know if the Board could see and review candidates who might be considered as their legal counsel. She said, she would have to check with her legal counsel and see whether the Board would even be given the name and qualifications of the other applicants for the position of Board Legal Counsel.

The Board secured from Ms. Carreon a commitment that no decision would be made for Board Counsel on the part of her office and the State until after the next meeting of the Board commencing on July 13, 2022. The Board concluded, however, with the clear statement that the choice was theirs as to who would be representing the Board as its legal counsel and that the Board had made its decision already with the adoption of the motion on this date, employing Mr. Zeh and his law firm as Board legal counsel.

#### 4. Public Comment.

Before calling this matter the Board Chairman Weber expressed concern that the Board voted on a motion to employ Board counsel without first hearing from Ms. Carreon before voting. He then asked Board counsel if the process that was followed was procedurally correct. Board Counsel advised that Ms. Carreon had the opportunity to comment on the employment of Board Legal Counsel when the Board Chairman called for public comment. She obviously had an opportunity to comment and express her view of the State's position following the vote and she


would have had the opportunity once again to comment during the public comment period at the conclusion of the meeting. At this point, Ms. Carreon indicated she had no further comment. The Board Chairman stated, then, that there was no public comment to be heard at the conclusion of the meeting. Board counsel advised that no public comment had been received during the course of the meeting to be reiterated at the conclusion of the meeting.

5. Adjournment.

Board Chairman called for this item to be heard. It was moved by William Spielberg, seconded by Scott Fullerton to adjourn the meeting. **Motion adopted.**

**Vote: 5-0.**

Dated this <sup>14<sup>th</sup></sup> day of July, 2022.

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

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