

STATE OF NEVADA

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

September 9, 2020

Via teleconferencing and audio conferencing (WebEx)

**Steve Ingersoll (Labor)
Rodd Weber (Management)
James Halsey (Labor)
Frank Milligan (Public at Large)**

On September 9, 2020, a meeting of the Nevada Occupational Safety and Health Review Board was convened. The meeting was duly noticed in compliance with the Nevada Open Meeting Law as modified by Governor Sisolak's Emergency Directive 006, permitting meetings to be conducted by teleconferencing and audio conferencing (WebEx) and providing for a refined publication process for posting and the publication of agendas or notices of the meeting. This meeting took place by teleconferencing. 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.

The meeting was called to order at approximately 9:30 a.m., after a late arrival of the Court Reporter due to login difficulties delaying her participation in the meeting conducted by video conferencing. The commencement of the meeting was delayed further by excessive feedback on the audio portion of the meeting which was eventually corrected, enabling the meeting to proceed. This presented further timing difficulties because Board Secretary Rodd Weber, a management representative, had to depart for another matter. As he was the only management member of the Board participating on this date, a quorum would have been lost upon his departure from the meeting.

1. Roll Call.

Present by video conferencing were Chairman Steve Ingersoll, Board Secretary Rodd Weber and Board members James Halsey and Frank Milligan. Member Lance Semenko was absent for the meeting. As four members of the Board participated in the meeting, including a representative of labor and a representative of management, a quorum was present to conduct the Board's business.

Also present *via* video conferencing was Board counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Further, present at various times throughout *via* video conferencing were Jess Lankford, Chief Administrative Officer of Nevada OSHA, Salli Ortiz, Esq., deputy legal counsel to the State OSHA Administration, Victoria Carreon, Director of the Division of Industrial Relations, Jimmy Andrews, Program Coordinator, State of Nevada, who acted as the

host on Webex for the meeting, Tristan Dessler, Program Coordinator, State of Nevada, and Donald C. Smith, Esq., legal counsel to the Division of Industrial Relations, who appeared by audio conferencing only.

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 through the Governor's Emergency Directives. 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 further modified by Emergency Directive 006 of the Governor.

2. Public Comment.

Board Chairman Ingersoll called this item to be heard. Board counsel advised that there was no written public comment received by his office in advance of the meeting. There was also, no public comment offered at this time during the course of the meeting.

3. Administrative Meeting:

Next, the Board Chairman convened the administrative segment of the meeting.

a. Approval of Previous Review Board Minutes of August 27, 2020.

Chairman Ingersoll called the minutes next for hearing. It was noted that the word "Administrative" following State OSHA in the second paragraph from the bottom of page one of the minutes of August 27, 2020, should be stricken and replaced by the word "Administration." With the exception of this one correction, it was moved by James Halsey, seconded by Rick Weber, to approve the minutes of August 27, 2020, as read. **Motion adopted.**

Vote: 4-0.

b. Review Contested Case Settlements, Motions, Draft Decisions, or Procedural Issues Pending on Status Report, for Approval and Issuance of Final Orders:

i. LV 20-2042, Diamond Bakery Incorporated, dba Diamond Bakery

Board counsel provided a brief overview of the settlement after which it was moved by James Halsey, seconded by Frank Milligan, to approve the settlement and authorized execution by the Chairman of a final order in this matter. **Motion adopted.**

Vote: 4-0.

ii. Consideration of a General Procedural Order to Facilitate the Conduct of Hearings Held by the Virtual Hearing Method.

The Board considered the draft general procedural order set forth in a memo of September 2, 2020, and a second memo of September 8, 2020 for the handling of exhibits and the testimony of witnesses in a hearing conducted by the virtual hearing method. This will be a general order applicable to all contested matters conducted on a virtual hearing basis. It will remain in effect until further order of the Board of Review. The Order will be served upon parties scheduled for contested hearings and will be published or posted on the State's Public Notice website, if possible and if adopted by the Board.

The General Procedural Order had been provided the Board members in advance of the hearing, as well as to Salli Ortiz, Esq. and Donald C. Smith, Esq. If approved, the General Order will also be posted on the States Public Notice website. After providing the opportunity for discussion by the Board and Public, without any comments being offered, it was moved by Rodd Weber, seconded by Frank Milligan, to approve the General Order drafted by Board counsel as presented to the Board for the Chairman's signature. **Motion granted.**

Vote: 4-0.

c. General administration and/or procedural issues.

Chairman Ingersoll then called these items to be heard.

i. General matters of import to Board members.

There was none.

ii. Old and New Business.

There was none.

iii. Conduct of Contested Case Hearing.

Chairman Ingersoll expressed concern about the fact that the virtual hearings were being hosted by a member of the staff of the Division of Industrial Relations. This was not a criticism of the job staff was doing to host the hearing. Rather, the Chairman was concerned about the appearance of neutrality when the hearings were be managed by an invite through the State rather than through the Board. The Board has refrained from conducting hearings in the past from the Union Hall or in the offices of a management group. The Board has also in the past refrained from conducting contested hearings in State office buildings in order to maintain the sense of neutrality. There is concern that the appearance of this neutrality evaporates or is questioned when the States sends out the invites to participate in the meeting *via* video conferencing.

Board counsel was, therefore, instructed to find out if there is some third-party that could, in the interest of neutrality, send out the invites and manage the conduct of the meeting.

d. Schedule of Hearings on Pending cases, calendar and status report.

The Chairman called this item to be considered. Salli Ortiz, Esq., asked whether in the general procedural order, the term "rank order" could be used instead of terms like "first set" and "second setting." Board counsel will look into this. Board counsel advised the Board that the cases have been docketed through June 2021. Also, there are at least 13 cases which have been filed with the Board that have not yet been scheduled for a hearing, as they are waiting, for example, the filing of an answer to the complaint.

4. Public Comment.

Chairman Ingersoll called this matter next to be heard. No public comment was offered at this time.

Following Public Comment, Rodd Weber excused himself for further participation in the meeting.

5. Adjournment.

Chairman Ingersoll called this item for consideration. It was moved by Frank Milligan, seconded by James Halsey, to adjourn the meeting. **Motion adopted.**

Vote: 3-0-1 (Weber absent).

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

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