

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

June 9, 2021
Via teleconferencing and audio conferencing (WebEx)

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

On June 9, 2021, 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 of the publication of Agendas or Notices of the Meeting. This meeting took place by Teleconferencing. The meeting also had a physical site to conduct business. Board Chairman Ingersoll conducted the meeting in person at the physical location of the meeting place whose address was 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada, 89502. 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 Ingersoll convened the meeting of the Board of Review at approximately 9:07 a.m., on Wednesday, June 9, 2021.

1. Roll Call.

From the Reno location, Chairman Ingersoll called this matter to be heard. The Board members participating in the meeting were Chairman Ingersoll, Secretary Rodd Weber and Board Members Frank Milligan, William Spielberg and newly appointed member Jorge Macias. As five members participated including representatives of labor and management, a duly constituted quorum was present to conduct the business of the Board. Excepting Chairman Ingersoll, the four remaining Board Members participated via teleconferencing. Chairman Ingersoll participated in person from the physical location of the meeting.

Chairman Ingersoll advised that also present were Salli Ortiz, Esq., counsel to the State of Nevada OSHA, and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., counsel to the Board or Review. Both participated in person from the physical site of the meeting.

This meeting of the Board was conducted on a hybrid basis. Frank Davis, Esq., Legal counsel for Aimbridge Hospitality, LP, (Aimbridge), case number LV19-1995, the lone contested matter remaining on the docket for the meeting of this date, appeared by video conferencing.

The hearing on this date was reported by Court Reporter Kathy Jackson, who was also personally present at the physical location of the meeting.

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 Sisolak'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 the Governor's Emergency Directives 006.

2. Public Comment.

Chairman Ingersoll called this matter to be heard. He asked if there was any public comment from those appearing at the meeting. None was offered. Board Counsel advised that his office had not received any written comment from the public. There was accordingly no public comment offered to the Board at the outset of this meeting.

3. Contested Hearings.

Chairman Ingersoll called this matter to be heard. The sole remaining contested matter for hearing on his date was Aimbridge Hospitality LP, case number LV 19-1995. The matter was set for oral argument and deliberation by the Board. The remaining contested cases on the docket for this date were settled or otherwise continued.

Frank Davis, Esq., appeared on behalf of the respondent, Aimbridge Hospitality LP. Salli Ortiz, Esq., appeared on behalf of the complainant. The matter was on the docket for oral argument and deliberation by the Board. Each party was given 30 minutes for its closing argument.

As the complainant has the burden of proof, the complainant, through Salli Ortiz, went first, reserving five minutes for rebuttal at the conclusion of the respondent's closing argument. Frank Davis, Esq., presented the closing argument on behalf of Aimbridge after which Ms. Ortiz used her five minutes that she held in reserve for rebuttal. Upon the conclusion of the closing argument the Board took the matter under advisement and elected to go immediately into deliberations for the disposition of this case. By reason of NRS 241.015(3)(b)(2), the Board was able to move into closed session for the deliberations. Accordingly, it was moved by Frank Milligan, seconded by Rodd Weber, to go into closed session for deliberations on this matter.

The motion was adopted.

Vote: 4-0 (Macias abstaining).

The meeting room was cleared of all but the Board members, Board legal counsel and the Court Reporter, who recorded the deliberations. The Board was also directed to a private chat room, to preserve confidentiality.

During the closed deliberation, no action was taken by the Board. The eligible members only deliberated while receiving the advice of Board Counsel. At the conclusion of the deliberations in private during the closed session, it was moved by Rodd Weber, seconded by Frank Milligan, to return to an open session in order to decide in public the disposition of this matter. **The motion was adopted.**

Vote: 4-0 (Macias abstaining).

Jorge Macias was present throughout the deliberations as well as the portion of the meeting when the Board rendered its decision. He did not participate in the deliberations, however, as he was not a member of the Board when the case was heard.

Having returned to general session, the Board proceeded to take action on each individual citation one at a time as well as two issues raised during oral argument and during the course of the hearing on this matter by Aimbridge as Aimbridge's affirmative defenses. The Board considered the affirmative defenses, first, before resolving each of the citations in this matter.

During the course of the hearing, evidentiary hearing and during oral argument, Aimbridge asked that the case be dismissed, arguing that Springhill Suites, the entity the subject of the citations in this matter, was joined by Town Place Suites as a single entity, also the subject of a complaint by State OSHA. Therefore, by reason of the single entity defense, the complaint should be dismissed as to Aimbridge in this matter. The Board evaluated the facts upon which this claim was based and found the facts wanting in support of the single entity defense and accordingly it was moved by Rodd Weber, seconded by Frank Milligan, to deny the motion to dismiss on single entity grounds. **The motion was adopted.**

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

Aimbridge also asked the Board to dismiss this case on due process grounds. Aimbridge claims it was denied due process because management was not permitted to sit in on the interviews which State OSHA investigators conducted of Aimbridge's line personnel. The Board determined that as matter of law, it was not a denial of due process for management personnel to be excluded from the interview of line staff by State OSHA investigators. It was accordingly moved by Rodd Weber, seconded by Frank Milligan, to deny the motion to dismiss on due process grounds. **The motion was adopted.**

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

The Board then moved to take in order each of the citations set out in the complaint. Disposing of Citation 1, Item 1, it was moved by Rodd Weber, seconded by William Spielberg, to sustain Citation 1, Item 1, in its entirety including the fine of \$4,410. **The motion was adopted.**

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

The Board then considered Citation 1, Item 2. It was moved by Frank Milligan, seconded by William Spielberg, to sustain Citation 1, Item 2, in its entirety, including the fine of \$4,410. **The motion was adopted.**

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

The Board then considered Citation 1, Item 3. It was moved by Rodd Weber, seconded by Frank Milligan, to sustain Citation 1, Item 3, including the fine of \$2,363. **The motion was adopted.**

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

The Board then considered Citation 1, Item 4. It was moved by Frank Milligan, seconded by William Spielberg, to sustain Citation 1, Item 4, including the fine of \$4,410. **The motion was adopted.**

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

The Board then considered Citation 1, Item 5. After deliberation, the Board concluded that Citation 1, Item 5, should be reduced from a "Serious" to an "Other-Than-Serious" violation, reducing the fine from \$4,410 to \$473. It was accordingly so moved by Frank Milligan, seconded by William Spielberg. **The motion was adopted.**

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

The Board then considered Citation 1, Item 6. It was moved by Rodd Weber, seconded by Frank Milligan, to sustain Citation 1, Item 6, including the fine of \$4,410. **The motion was adopted.**

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

The Board then considered Citation 1, Item 7(a). The Board did not believe the State had proved its *prima facie* case in connection with this matter. It was moved by Rodd Weber, seconded by Frank Milligan, to vacate Citation 1, Item 7(a). **The motion was adopted.**

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

Item 7(a) was vacated and dismissed with prejudice.

The Board then considered Citation 1, Item 7(b). The Board did not believe the State had proved a serious violation in connection with this allegation and determined to reduce the matter to an "Other-Than-Serious" violation with no fine. It was so moved by Frank Milligan, seconded by Rodd Weber. **The motion was adopted.**

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

This fine for this item was reduced to \$0, with the Citation re-classed as "Other-Than-Serious."

The Board then considered Citation 1, Item 8. It was moved by Rodd Weber, seconded by Frank Milligan, to sustain Citation 1, Item 8, and the fine of \$4,410. **The motion was adopted.**

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

The Board then considered Citation 1, Item 9. It was moved by William Spielberg, seconded by Frank Milligan, to sustain this Citation and the fine in the amount of \$1,890. . **The motion was adopted.**

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

The Board then considered Citation 2, Item 1. During the course of the hearing, this Citation was withdrawn by the State. There is no fine. The withdrawal is affirmed by the Board. The Citation is dismissed with prejudice.

The Board then considered Citation 2, Item 2. It was moved by Frank Milligan, seconded by William Spielberg to sustain this Citation and the fine in the amount of \$473. **The motion was adopted.**

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

The Board then considered Citation 2, Item 3. It was moved by Frank Milligan, seconded by Rodd Weber, to sustain this Citation and the associated fine of \$473. **The motion was adopted.**

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

The Board then considered Citation 3, Item 1. It was moved William Spielberg, seconded by Frank Milligan, to sustain Citation 3, Item 1, and the fine of \$473. **The motion was adopted.**

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

This concluded the decision made by the Board for this matter.

4. Administrative Meeting:

- a. Approval of the previous Review Board minutes for June 4, 2021.

Chairman Ingersoll called this item to be heard. It was moved by Frank Milligan, seconded by William Spielberg, to approve the minutes as read. **Motion adopted.**

Vote: 3-0-2 (Macias and Ingersoll abstaining as they were not present for the meeting).

- b. Review contested case settlements, motions, draft decisions, or procedural issues.
 - i. RNO 19-1974, Ponderosa Hotel, Inc.

It was moved by Rodd Weber, seconded by Frank Milligan, to approve the decision drafted by Board counsel as written and without further correction. **Motion adopted.**

Vote: 3-0-2 (Spielberg and Macias abstaining as neither were present for the disposition of this matter).

- ii. RNO 19-1975, Ponderosa Hotel, Inc.

It was moved by Frank Milligan, seconded by Rodd Weber, to approve the draft decision drafted by Board counsel as written and without correction. **Motion adopted.**

Vote: 3-0-2 (Spielberg and Macias abstaining as neither were present for the disposition of this matter).

- iii. RNO 20-2031, Broken Arrow Communications, Inc.

It was moved by Rodd Weber, seconded by Frank Milligan, to defer a disposition of this proposed withdrawal because of the absence of adequate information from which to make a decision as to the fairness and propriety of the settlement. The Board instead moved to direct Board counsel to communicate with the State of Nevada, advising that the Board wanted more information for the proposed withdrawal of this matter before the Board would act upon it. **Motion to defer was adopted on a vote of 5-0.** This motion amounts to a continuance, awaiting for an explanation from the State justifying the decision to withdraw the case for consideration by the Board.

- iv. RNO 20-2036, Tesla Inc., Tesla Motors, Inc.

Sierra Vierra, Esq., appeared by teleconference as Tesla's general counsel. Her main reason for appearing here was to thank the Board for its courtesy and cooperation. It was accordingly moved by Rodd Weber, seconded by Frank Milligan, to approve the settlement. **Motion adopted.**

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

- v. RNO 20-2037, Tesla Inc., Tesla Motors, Inc.

Ms. Vierra appeared on behalf of Tesla on this matter as well and expressed the same sentiments she did for case number RNO 20-2036. It was accordingly moved by Rodd Weber, seconded by Frank Milligan, to approve the settlement in this matter. **Motion adopted.**

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

vi. RNO 20-2041, Harris Rebar Northern California, Inc.

It was moved by Frank Milligan, seconded William Spielberg, to approve the settlement in this matter. **Motion adopted.**

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

c. General administration and/or procedural issues.

Chairman Ingersoll called this matters to be heard under this heading.

i. General matters of import to Board members.

The matter of hybrid hearings was brought up at this time. Board members were canvassed and it was determined that for the meeting of July 14 and 15, 2021, each of the Board members would be physically in attendance and, therefore, there was no reason to hold a hybrid meeting inasmuch as, according to Board counsel, there is no requirement that hybrid meetings be held. The Board, in other words, could revert back to meetings in person prior to the advent the pandemic. The issue of face masks, however, was also raised. Victoria Carreon, Director, DIR, appeared by teleconference and advised that as of the moment, employees of the State of Nevada, must wear a face mask and that in her opinion Board members were employees of the State of Nevada. Therefore, as employees of the State, in her opinion, Board Members fall under the requirement that they wear face masks in gatherings such as this even if they were meeting at a non-state premises that did not require face masks to hold hearings. Board members expressed their general disagreement with her about their status as employees of the State of Nevada, the prospect of a conflict of interests being present if Board members were employees of the State of Nevada while ruling on cases being prosecuted by the State of Nevada. The Board wants this issue of their status as employees of the State of Nevada as Board members raised at the next Board meeting and expects that Board Counsel will have researched the issue for discussion at that time.

ii. Old and New Business.

These matters were subsumed by discussion under 4 c. i.

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

Board members questioned the 20-25% deduction in compensation being offered to Board counsel. Part of the Board's independence flows from having legal advice from its own competent and adequate legal counsel. A part of that need is that its legal counsel be adequately funded. Board members thought it would be advisable for a meeting with Terry Reynolds, Director of the Department of Business and Industry, the supervisor of Victoria Carreon, Victoria Carreon and Board Chairman Ingersoll and Board Secretary Rodd Weber to meet and confer about the status of Board Counsel's compensation. The meeting was requested, Ms. Carreon said that she would inquire and advise the Board of the willingness of the State Management to meet with Board members concerning this issue. The matter would not be dropped and is to be

agendized, again, for further discussion, if no meeting takes place. The participants are to report back to the Board.

iv. Election of Officers.

Board Chairman Ingersoll called this item to be heard. In satisfaction of the annual requirement to elect officers of the Board, this item on the agenda was also important due to the fact that Chairman Ingersoll is completing his 8th year as a member of the Board and is, therefore, termed out as a Board member. He will be leaving the Board, effective, July 1, 2021.

Steve Ingersoll opened nominations for the position of Board Chairman. He nominated Rodd Weber to succeed him as Chairman of the Board. There being no further nominations for the position of Board Chairman, the nominations for Board Chairman were closed. A vote was taken. Rodd Weber was elected the new Chairman of the Board. His term will commence July 1, 2021. The vote was 4 in favor 0 against and 1 abstention (Weber). Rodd Weber was elected the new Chairman of the Board.

Next Chairman Ingersoll called for the nomination of the Board's Secretary. He opened nominations and nominated Frank Milligan as Secretary of the Board. Due to the press of his employment, Frank Milligan regrettably declined the nomination. Chairman Ingersoll then nominated William Spielberg as the new Board Secretary. There being no further nominations for the position of Board Secretary, Board Chairman Ingersoll closed the nominations. A vote was taken. Mr. Spielberg was elected on a vote of 4 in favor 0 against and 1 abstention (Spielberg).

v. Discussion of possible methods for expediting hearings before the Board.

Chairman Ingersoll called this item to be heard. It is on the Agenda because Board members have expressed concern over the length of meetings due to the repetitious nature of some of the presentations and the number of continuances, all of which combine to increase the work load of Board counsel and extend the time it takes to hear, conclude and decide a case. Various suggestions were offered but because of the due process concerns, they were somewhat unworkable. Undue limitations on the length of hearings could raise due process issues. Greater control over the course of a hearing, however, would be something to consider when attorneys or witnesses become repetitious or matters extraneous to the proceedings are brought before the Board. These are time consuming and extend the nature of the hearing. Board members would pursue as a goal, the conclusion of a case on the same day it is brought to the Board, but if not possible, then to place the matter at the head of proceedings for the next day of hearings. The intent, here, also is to conclude the hearing and decide the matter when the case is still fresh in each Board Member's mind. Continuing cases, partially heard, for a long period of time, defeats the purpose of deciding cases while the presentation is still fresh.

- vi. Recognition of Steve Ingersoll for eight years of service to the Board and the State of Nevada.

Rodd Weber brought this matter to the Board's attention. He expressed gratitude to Chairman Ingersoll for his eight years of service to the Board and the State of Nevada. During the years of service for the Board, the Chairman performed admirably, always keeping the best interests of the State and those appearing before the Board at heart. Board Counsel expressed the same sentiment. It was a privilege to work with Chairman Ingersoll. The Board Chairman is the main liaison with the Board and its legal counsel, between Board meetings, and therefor, Board counsel is aware of the enormous, additional demands placed upon the person holding the position of Chair. Despite the demands of his own employment, Chairman Ingersoll always found time to respond when needed to transact Board Business such as evaluating whether to grant motions, issuing orders, and deciding evidence questions. Each Board member expressed gratitude for the Chairman's service to the State and to the Board. And, all wished him well as he moves from the Board to other great adventures.

- d. Schedule of hearings on pending cases.

The Chairman Ingersoll called this item to be heard. No revisions in the schedule were warranted and that concluded the discussion of this item.

The schedule of meetings are as follows:

- * **July 14 and 15, 2021** - 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada, 89502.
- * **August 11 and 12, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **September 8 and 9, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **October 13 and 14, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **November 9 and 10, 2021** 4600 Kietzke Lane, Building F, Suite 150, Reno, Nevada 89502.
- * **December 8 and 9, 2021** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **January 12 and 13, 2022** - 4600 Kietzke Lane Building F, Suite 150, Reno, Nevada 89502.
- * **February 9 and 10, 2022** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- * **March 9 and 10, 2022** - *Location not determined.*
- * **April 13 and 14, 2022** - *Location not determined.*
- * **May 11 and 12, 2022** - *Location not determined.*
- * **June 8 and 9, 2022** - *Location not determined.*
- * **July 13 and 14, 2022** - *Location not determined.*
- * **August 10 and 11, 2022** - *Location not determined.*

- * **September 14 and 15, 2022** - *Location not determined.*
- * **October 12 and 13, 2022** - *Location not determined.*
- * **November 9 and 10, 2022** - *Location not determined.*
- * **December 14 and 15, 2022** - *Location not determined.*

5. Public Comment.

The Chairman called this matter to be heard. Scott Fullerton, the individual appointed by the Governor to fill the vacancy created by the departure of Board Chairman Steve Ingersoll, was in attendance at the meeting. He stepped forward for public comment, advising that he looked forward to becoming a member of the Board effective July 1, 2021. He considered it an honor to be a Board member and looked forward to working with the remaining Board members in the service the Board provides the citizens of the State of Nevada.

There was no further public comment.

6. Adjournment.

Board Chairman Ingersoll called this item to be heard. It was moved by Frank Milligan, seconded by Rodd Weber, 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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