

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

June 12, 2024

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

The meeting of the State of Nevada Occupational Safety and Health Review Board was called to order by Chairman Rodd Weber on June 12, 2024 at 9:45 a.m. The meeting was scheduled to commence at 9:00 a.m. on this date but because of microphone problems of the State of Nevada, the host for the meeting of the Board, the commencement of the meeting was delayed until 9:45 a.m.

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 175, Las Vegas, NV. The Board convened at the Division of Industrial Relations offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV. 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.

1. **Roll Call.**

Board members present at the meeting were Board Chairman Rodd Weber, Board Secretary William Spielberg, and Board members Frank Milligan, Jorge Macias and Scott Fullerton. As five members of the Board were present for the meeting, including two member representing labor, one member representing the public at large and two members representing management, a quorum was present for the Board to conduct its business on this date.

Also present were Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Salli Ortiz, Esq., Counsel to the Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada. Charles Keller, Esq., and Dawn Davis, Esq., were also present at the outset of the meeting as well as numerous public observers.

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
3360 West Sahara Avenue, Suite 175
Las Vegas, NV.

This Notice was also timely posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR) website at <https://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <https://notice.nv.gov>

2. Public Comment.

There was no public comment offered from the participants in the meeting and no written public comment had been received by Board Counsel's office.

3. Contested Case Hearings.

a. LV 23-2215, GM Construction LLC

Chairman Weber then called Item 3, contested case hearings, to be heard, commencing with a hearing on the respondent's Motion for Summary Judgment in GM Construction, LLC, docket number LV 23-2215. Charles Keller was present on behalf of the respondent and moving party for this matter. The respondent sought a dismissal of this case by virtue of its motion for summary judgment. Salli Ortiz, Esq., was present on behalf of the complainant, the Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada.

The Board had before it the motion of the respondent for summary judgment, supported by points and authorities and exhibits. The Chief Administrator filed an opposition supported by exhibits attached thereto, and the respondent correspondently filed its reply. The motion cycle for this motion for summary judgment brought pursuant to Rule 56, NRCP, was completed. The parties argued their respective position to the motion with the respondent being given 30 minutes to present its oral argument, the state being given 30 minutes in opposition, and then the respondent being given 15 minutes for a reply to State's opposition to the motion.

Argument followed, with the Board questioning the parties. The Board then took the matter under advisement and deliberated. The case involved an interpretation of 29 CFR 1926.1052(c)(1)(i). The fundamental issue before the Board is whether the covered sports arena (the Sphere) under construction involved a total staircase or a series of connected, 2-steps staircases. If the structure consisted of a series of 2-steps staircases, then a handrail or some form of support structure along the stairway would not be required. If, however, the structure consisted of a total staircase up and down the aisles of the bleacher sections of the sport venue while under construction, a handrail would be required as employees performed work on the stairway to the seating in the arena. Charles Keller, Esq., argued the motion for summary judgment for the respondent. Salli Ortiz, Esq., argued in opposition to the motion for the complainant. Upon deliberation, the Board concluded that neither side had provided the Board with sufficient information to make a determination as to the stairway situation, *i.e.*, a series of a 2-step staircases or one long staircase in a series of staircases. There was only one cause of action or citation in the complaint. Believing that the Board did not have sufficient information to resolve this fundamental question about the stairway structure in the arena, it was moved by Jorge Macias, seconded by Scott Fullerton, to deny the motion for summary judgment. The motion was adopted on a vote of 4 - 1, with the Chairman opposing the motion to deny the Respondents' summary judgment motion. The motion for summary judgment being denied, this matter will set down for hearing on the merits.

b. LV 23-2206, Champion Painting Specialty

Chairman Weber then called to be heard Champion Painting Specialty, LV 23-2206. This was a companion case to GM Construction. Ms. Ortiz argued on behalf of the complainant in opposition to the motion for summary judgment. Dawn Davis, Esq., argued this matter on behalf of the respondent as the moving party seeking summary judgment, dismissing the case. The dispute involved the same sports venue under construction in the GM Construction matter. The same structural issue presented itself in this case as in GM Construction, namely whether the venue under construction consisted of a series of 2-step stairways or one connected stairway running from the floor of the arena to top deck of the spectator area.

In fact, the physical structure at issue in Champion was identical to that in GM Construction as it was the same venue under construction. The work performed by the employees in Champion differed from the work performed by the employees in GM Construction. In GM Construction the employees were engaged in the installation of the stairways, whereas in Champion, the employees were involved in the horizontal work of applying epoxy to the stairway and platform structure comprising the seating arrangements in the Sphere.

The Board concluded, however, that the amount of information it had in Champion was the same as that which it had in GM Construction to decide the motion for summary judgment. That is to say, in Champion, also, the Board did not feel that either side had provided sufficient information to resolve on the merits a motion for summary judgment. It was therefore, accordingly moved by Jorge Macias, seconded by Scott Fullerton, to deny Champion's motion for summary judgment. The motion was adopted on a vote of 4 - 1, with Chairman Rodd Weber voting in opposition to the motion to deny the motion for summary judgment brought under rule 56, NRCP (Nevada Rules of Civil Procedure).

With the vote on the Champion matter, the contested case hearings portion of the Agenda was concluded. Chairman Weber then called upon the Board to consider section 4-Administrative Meeting matters.

- a. Approval of Previous Review Board Meeting Minutes:
 - i. April 1, 2024 minutes. It was moved by Scott Fullerton, seconded by William Spielberg, to approve the minutes for April 1, 2024 as read. The motion adopted by a vote of 5-0.
 - ii. April 17, 2024 minutes. It was moved by Scott Fullerton, seconded by William Spielberg, to approve the minutes for April 17, 2024 as read. The motion adopted by a vote of 5-0.
 - iii. May 8, 2024 minutes. It was moved by Scott Fullerton, seconded by Jorge Macias, to approve the minutes of May 8, 2024 as read. The motion was adopted by a vote of 3-0-2, with Rodd Weber and Frank Milligan abstaining as both were absent from the meeting of May 8, 2024.

Chairman then called Item 4. b., to be heard, a review of contested case settlements, motions, draft decisions, etc.

- i. RNO 21-2101, DNA Framing, Inc., dba DNA Carpentry.

Chairman Weber called this matter to be heard. This matter was before the Board to consider the draft decision disposing of this case. It was moved by Jorge Macias, seconded by Scott Fullerton to approve the decision as drafted because it was consistent with the action taken by the Board, with the Acting Chairman authorized to make any corrections or typographical errors or non-substantive revision in the decision before serving the same on the parties to the proceedings. The Motion was approved on a vote of 4-1 (Chairman Weber abstaining).

- ii. LV 23-2198, D&L Roofing, Inc.

This matter will not be heard as it was continued.

- iii. RNO 23-2213, Smith Valley Dairy Corp.

Chairman Weber then called this matter to be heard. It was moved by Scott Fullerton, seconded by Frank Milligan to dismiss the case with prejudice as Smith Valley Dairy Corp., according to Salli Ortiz, Esq., counsel for the State, Smith Valley had paid the fine levied in this matter in full and because Smith Valley withdrew its contest of the complaint in this matter. The motion was adopted on a vote of 5-0.

Board Chairman then called for the Board to review the Contested Case Settlements below.

- iv. LV 22-2147, Pacific Paper Tube, Inc.

The Board Chairman called this matter to be heard. It was moved by Frank Milligan, seconded by Jorge Macias, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- v. RNO 20-2020, Herc Rentals Inc.

This matter was continued.

- vi. LV 22-2170, Ashford TRS Las Vegas LLC dba Las Vegas Embassy Suites

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Jorge Macias, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- vii. LV 22-2175, Highgate Hotels, L.P. dba Fairfield Inn & Suites Las Vegas South

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Frank Milligan, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- viii. LV 20-2026, PRS of Nevada, LTD dba Professional Roofing Services

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Jorge Macias, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- ix. LV 21-2050, Bombard Mechanical, LLC

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Frank Milligan, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- x. RNO 19-1964, Caliber Holdings Corp., Caliber Bodyworks of Nevada, Inc. dba Caliber Collision

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded by William Spielberg, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xi. RNO 20-2047, Encore Steel Builders, LLC

The Board Chairman called this matter to be heard. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xii. LV 21-2076, Nazsteez LLC dba Rock's 76

The Board Chairman called this matter to be heard. It was moved by Frank Milligan, seconded by Scott Fullerton, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xiii. LV 21-2124, Circadian Enterprises Incorporated dba American Abatement

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Frank Milligan, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xiv. RNO 21-2128 USF Reddaway Inc.

The Board Chairman called this matter to be heard. It was moved by William Spielberg, seconded by Scott Fullerton, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xv. LV 21-2131, Rent A Tire, L.P. dba Rent a Wheel

The Board Chairman called this matter to be heard. It was moved by Frank Milligan, seconded by William Spielberg, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- xvi. RNO 21-2098, Reno Cab Company, Inc.

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded by Frank Milligan, to approve this settlement agreement of the parties. The motion was adopted on a vote of 5-0.

- c. General Administration and/or procedural issues.

- i. General Matters of Import to Board members.

The Chairman then called this matter for hearing. It was pointed out that a replacement for Rodd Weber had not yet been appointed. The appointment of a replacement is necessary as the Board Chairman is term limited out as of June 30, 2024. Additionally, Frank Milligan recognized the length and quality of service given by Chairman Weber to the Board and the State of Nevada during his eight years of membership and stewardship on this Board. Chairman Weber's dedication to the Board and service to the people of the State of Nevada must duly be recognized and member Milligan offered that congratulations, acknowledgment and recognition as well as gratitude for his service to the Board and State of Nevada be extended to the Chairman.

ii. Old and New Business.

Board legal counsel advised the Board that his contract to continue representing the Board had been approved by the Board of Examiner (BOE).

iii. Discussion of pending cases.

There was no discussion of pending cases.

iv. Discussion of Board Counsel's Contract.

The Board Chairman advised that an application on behalf of the Board would be submitted to amend the existing contract, by increasing the amount of \$30,000, the amount of the funds to be paid under the current contract. This request is being made because the workload outstripped the budget and as a result, Board counsel had already waived/donated \$60,000 or more in attorney fees to stay within the budget cap for representation to the Board. The Board will be seeking up to an additional \$30,000 to cover the overflow of work for the months of October through December 2024.

5. Public Comment.

Chairman Weber called public comment to be heard. There was no public comment offered from the public at this time and no written comment had been received by Board Counsel's office.

6. Adjournment.

Board Chairman called for adjournment to be heard. Before a vote was taken on this issue, Board Counsel also offered his thanks and kudos to the Board Chairman for his great work over the years and most recently as Chairman of the Board for State OSHA. It was then moved by Jorge Macias, seconded by Frank Milligan, to adjourn the meeting. The motion was adopted on a vote of 5 in favor and none against the motion to adjourn.

Dated this 10th day of July, 2024.

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