

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

May 8, 2024

Rodd Weber (Management)
William Speilberg (Labor)
Jorge Macias (Management)
Scott Fullerton (Labor)
Tyson Hollis (Public)

On May 8, 2024, 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 to take place at the Division of Industrial Relations, 4600 Kietzke Lane, Suite F-150, Reno, Nevada, 89502. The Board convened at the Division of Industrial Relations offices located at 4600 Kietzke Lane, Suite F-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 Rodd Weber called the meeting to order of the OSH Review Board at approximately 9:20, a.m., on May 8, 2024, after a slight delay due to equipment problems with the microphones used to conduct the hearing.

1. Roll Call.

Board members present were Chairman Rodd Weber, Scott Fullerton, Jorge Macias and Tyson Hollis. Absent from the meeting were public member Frank Milligan and Board Secretary, William Spielberg. Tyson Hollis is the public member alternate and, therefore, sat for the meeting on this date in the absence of Frank Milligan. As four members of the Board were present for the meeting, including one 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 in person was Salli Ortiz, Esq., Legal Counsel to the State and Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Board Legal Counsel.

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
4900 Kietzke Lane, Suite F-150
Reno, Nevada, 89502

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 none offered from the participants in the meeting and no written public comment had been received by Board Counsel's office.

3. Contested Case Hearings.

Chairman Weber called Item 3, contested case hearings to be heard.

a. Raine's Market, Inc., RNO 21-2106

Board Chairman called this matter to be heard. This matter had been tried previously but the Board had deferred disposition of the case. The matter was before the Board for the Board's deliberation and to make a determination or take other appropriate action. Scott Raine had appeared on behalf of his company, Raine's Market, when the matter was heard. He was duly noticed for the hearing on this date but did not appear. The Board reviewed the transcript and records. It was moved by Jorge Macias, seconded by Scott Fullerton to dismiss the citation in this matter. The motion was adopted.

Vote: 4-0. The case is dismissed by disposition and order of the Board.

b. Q&D Construction, LLC, RNO 23-2194.

Board Chairman called this matter to be heard. This matter entailed a contested hearing regarding a motion filed by the respondent to conduct discovery in the form of interrogatories and requests for the production of documents and records. In the respondent's reply, to the State's opposition to the motion for discovery, the respondent also sought an order allowing respondent to take depositions in this matter. The State was represented in this case by Salli Ortiz, Esq. Respondent was represented by Lisa Wiltshire-Alstead, Esq. Each side presented their argument for and against the motion. Board counsel advised the Board that as these proceedings are

governed by the Nevada Rules of Civil Procedure, unless otherwise stated, the motion to propound interrogatories and request for the production of documents and records are premature and unnecessary. Under the Nevada Rules of Civil Procedure, leave is not required to propound interrogatories or requests for the production of documents and records and there is nothing in the Nevada Administrative Code applicable to the Board which would provide otherwise. Board counsel also advised further that the request for the taking of depositions set forth in the reply to an opposition to a motion is an inappropriate use of the pleading process. Including a new request for relief of a different nature set forth in the reply to an opposition to a motion circumvents the process and deprives the opposing party of the opportunity to address the motion to take depositions. Accordingly, in the opinion of Board Counsel, that application for taking a deposition should be denied on procedural grounds.

The Board agreed. It was moved by Jorge Macias, seconded by Tyson Hollis, to deny the motion to take discovery by deposition and/or to propound interrogatories or request for production of documents and records. The motion was adopted on a vote of 4-0.

The upshot of the motion and order is that the respondent is free to propound interrogatories and requests for the production of documents and records according to the Nevada Rules of Civil Procedure. If the respondent continues to pursue discovery by deposition, the respondent is free to file an appropriate motion and the Board will consider the pursuit of discovery by deposition at that time. The motion to take discovery is otherwise premature and unnecessary and is, therefore, denied, as stated, on a vote of 4-0 to deny the motion.

- c. Universal Consulting Corporation dba A-1 Concrete Cutting & Demolition aka A-1 Concrete Cutting, LV 23-2184.

Chairman then called this matter to be heard. This matter was before the Board upon the respondent's motion to reconsider the Board's previous denial of respondent's motion for summary judgment as to the first two causes of action of a three cause of action complaint before the Board. If the motion to reconsider was granted, the Board would then proceed to revisit the motion for summary judgment as prayed for in the motion to reconsider. If the motion to reconsider was denied, the motion for summary judgment would stand, the first two causes of action would remain dismissed, and the Board would then proceed to hear the third cause of action on the merits, absent an intervening additional motion. Board counsel pointed out to the Board that the complainant failed to oppose the motion to reconsider the motion for summary judgment. By default the motion to reconsider the motion for summary judgment stands.

The State was represented in this matter by Salli Ortiz, Esq. The respondent was represented by Dawn Davis, Esq. The motion for reconsideration and summary judgment revolved around 29 CFR 1926.850(a) and 29 CFR 1926.856(a). Ms. Ortiz offered no explanation or excuse for the absence of the opposition to the Respondent's motion to reconsider the motion for summary judgment. The motion for reconsideration of the motion for summary judgment standing before the Board by default, the Board proceeded to hear from the parties on the motion for summary judgment. Both parties were given ample opportunity to present their position upon the motion for summary judgment as reconsidered. After considerable debate by the Board amongst themselves and in response to questions they propounded to counsel for both parties, it was moved by Jorge Macias, seconded Tyson Hollis, to grant upon reconsideration the

motion for summary judgment as to the causes of actions items 1 and 2 of the complaint. The motion was adopted on a vote of 3 in favor and 1 against the motion. Citations 1 and 2 of the Complaint are hereby dismissed. A final order shall be prepared for the disposition of Citations 1 and 2 of the Complaint. Citation 3 of the Complaint shall be set for a hearing on the merits.

This concluded the contested hearing portion of the Agenda and Board Chairman then called on Item 4, Administrative Meeting matters to be heard.

- a. Approval of Previous Review Board Meeting Minutes of March 13-14, 2024. There was no meeting of the Board generating minutes for April 2024.

The Board Chairman called this item to be heard. It was moved by Jorge Macias, seconded by Scott Fullerton, to approve the minutes as read. The motion was adopted on a vote of 4-0, with a quorum being present to vote on the instant motion and also being present for the meeting of March 13 and 14, 2024.

- b. Review contested case settlement, motions, draft decisions, or procedural issues.
 - i. LV 21-2135, CGG Enterprises, LLC dba World's Best Corndogs

The Board Chairman called this matter to be heard. The Board was consider the draft decision provided to the Board as the decision of the Board. Tyson Hollis did not participate in the original hearing on this matter but had the transcript and all the documents relating to this matter to review and could, therefore, participate in the decision to determine whether the draft decision was consistent with the action taken by the Board when the matter was heard. It was moved by Scott Fullerton, seconded by Jorge Macias, to approve the draft decision as the decision of the Board and to authorize Board Chairman to execute the decision after any topographical or other procedural non-substantive matters were corrected. Motion was adopted on a vote of 4-0.

- ii. RNO 23-2192, Helix Electric of Nevada, LLC dba Helix Electric (Notice of Withdrawal that Nevada OSHA is withdrawing the Citation and Notification of Penalty)

The Board Chairman called this matter to be heard. On this matter it was moved by Jorge Macias, seconded Scott Fullerton, to permit withdrawal and dismissal of this matter. Motion was adopted on a vote of 4-0.

The Board then took up the Review of Contested Case Settlements Listed in the Agenda. With the exception of Reno Cab Company, Inc., RNO 21-2098. This matter was pulled from the Agenda. The remaining Items under this heading, however, were heard by the Board and disposed of. Each proposed settlement was approved by the Board upon motion.

- iii. LV 21-2109, DCI Construction dba Design Concrete of Nevada

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was

adopted on a vote of 4-0.

- iv. RNO 22-2148, Erickson Framing NV LLC dba Erickson Construction

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Scott Fullerton, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- v. RNO 22-2163, Trivium Packaging USA, Inc.

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Tyson Hollis, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- vi. RNO 22-2164, Trivium Packaging USA, Inc.

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- vii. LV 21-2121, Eiffel Tower LLC dba The Eiffel Tower Restaurant

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Scott Fullerton, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- viii. LV 21-2119, Eiffel Tower, LLC dba The Eiffel Tower Restaurant

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Scott Fullerton, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- ix. LV 22-2181, Freeman Expositions, LLC dba Freeman Expositions

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Tyson Hollis, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- x. RNO 22-2178, ACCO Engineered Systems, Inc.

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- xi. LV 22-2167, National Pipeline Contractors, LLC

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Tyson Hollis, to approve the settlement agreement of the parties. The Motion was

adopted on a vote of 4-0.

- xii. RNO 21-2126, Hawthorne Recycling Metals Co.

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

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

This matter was pulled from the Agenda.

- xiv. LV 21-2099, Aria Resort & Casino Holdings, LLC dba Aria Resort & Casino

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- xv. RNO 23-2212, Cass NV, LLC

The Board Chairman called this matter to be heard. It was moved by Scott Fullerton, seconded Jorge Macias, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

- xvi. LV 22-2157, Better Motor Works, Inc. dba European Motor Cars

The Board Chairman called this matter to be heard. It was moved by Jorge Macias, seconded Scott Fullerton, to approve the settlement agreement of the parties. The Motion was adopted on a vote of 4-0.

Items xvii through xxi were approved upon a single motion as they represented a global settlement, thus, Items LV 21-2053, RNO 21-2054, RNO 20-2055, LV 21-2063 and LV 21-2073 were approved for settlement on a motion by Jorge Macias, seconded Tyson Hollis, to approve the five matters as globally settled by the parties. The Motion was adopted on a vote of 4-0.

- c. General Administration and/or procedural issues.

- i. General Matters of Import to Board members.

There were no general matters of import to Board members brought up during the course of the meeting.

- ii. Old and New Business.

Jorge Macias brought up his concern stated at the previous meeting, that an appointment should be in the works to fill the position to be vacated by Rodd Weber as he will be term limited

as of June 31, 2024, and will no longer be a member of the Board. Given the small number of Board members, a replacement needs to be appointed soon in order to avoid quorum issues. The Chairman said he would contact Victoria Carreon about his replacement appointment.

iii. Discussion of pending cases.

There was no discussion of pending cases.

iv. Consideration of the Submission of the Request from the Board to the Interim Finance Committee to Increase the Budget for Board Legal Counsel in Current Fiscal Year.

It was moved by Scott Fullerton, seconded by Tyson Hollis to submit a request to the Governor and/or Interim Finance Committee to approve up to an additional \$30,000 for the budget of Board Legal Counsel to finish the current fiscal year contract, especially given the work load generated by six month pause in Board business and the fact that Board Legal Counsel has already waived more than \$55,000 in fees in order to try and maintain budget integrity. The motion was adopted on a vote of 4-0.

5. Public Comment.

There was none generated at the site of the meeting and Board Counsel advised that his office had not received any public comment during the course of the meeting.

6. Adjournment.

Chairman then called adjournment to be considered. It was moved by Scott Fullerton, seconded by Jorge Macias, to adjourn the meeting. Vote: 4-0.

Dated this 12th day of June, 2024.

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