

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

March 12, 2025

Jorge Macias (Management)  
William Spielberg (Labor)  
Scott Fullerton (Labor)  
Tyson Hollis (Public)  
Gled Bautista (Management)

The meeting of the State of Nevada Occupational Safety and Health Review Board was called to order by Chairman Jorge Macias on March 12, 2025.

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 2300 West Sahara Avenue, Suite 750, Las Vegas, Nevada, 89102. 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 Chairman of the Board, Jorge Macias, called the Board meeting to order at approximately 9:03, a.m.

**1. Roll Call.**

The Chairman called the roll of the Board after convening the Board to commence the conduct of its business on this date. The members present for the meeting were Chairman Jorge Macias, Secretary William Spielberg, and Board members Scott Fullerton, Tyson Hollis and Gled Bautista. As all five members of the Board were in attendance, a quorum of the Board was present enabling the Board to conduct its business.

Also present were Charles R. Zeh, Esq., the law offices of Charles R. Zeh, Esq., Legal Counsel to the Board of Review and 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. Present on behalf of Unified Container, LLC, was Russell Peterson, a lay advocate. He was neither an attorney nor an employee of Unified Container, LLC .

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.  
6900 South McCarran Blvd., Suite 2040  
Reno, Nevada 89509

Division of Industrial Relations  
2300 West Sahara Street, Suite 300  
Las Vegas, NV 89102

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.**

The Chairman then called this item, public comment, to be heard. No public comment was offered to the Board prior to the meeting of the Board. Board Counsel advised that his office had received no public comment prior to the commencement of the hearing on this date.

## **3. The Board's selection of Legal Counsel for July 1, 2025 through June 30, 2026.**

Board chairman called this item to be heard, namely, the selection of Board Counsel for the period of July 1, 2025 through June 30, 2026. Charles R. Zeh, Esq. and The Law Offices of Charles R. Zeh, Esq., applied for the position to extend the firms' representation of the Review Board for the period stated. It was moved by Scott Fullerton, seconded Gled Bautista, to accept the proposal of the lawfirm of Charles R. Zeh, Esq., to continue as legal counsel for the Board. Motion unanimously adopted. The Board has chosen the Zeh Law firm to continue as legal counsel to the Board for the period July 1, 2025 to June 30, 2026.

Vote: 5-0.

## **4. Contested Case Hearings.**

The Board Chairman then called this Item to be heard. Seven contested cases were initially listed to be heard on the contested docket of the Board for the meeting of this date. Eventually, all but one item, Unified Container, LLC, were settled or the hearing vacated, leaving only Unified Container, LLC to be heard by the Board on this date.

e. LV 24-2304, Unified Container, LLC.

The Chairman called to be heard 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, Complainant v. Unified Container, LLC, Respondent,

Case No. LV 24-2304. Salli Ortiz, Esq., represented the Complainant. Russell Peterson, a lay advocate, non-lawyer and non-employee of the respondent, represented the respondent.

Both parties waived opening statements. The State offered two exhibits known as C-1 through C-326. The respondent offered exhibits R-8 through R-17. There was no objection to the admission of the State' exhibits. Except for a minor objection which was overruled, Respondent's exhibits R-8 through R-17 were admitted into evidence along with all 326 of the State's exhibits. For this matter, the State brought six citations, Citation 1, Item 1 through Citation 1, Item 6. According to the complaint on file in this matter, the State pursued fines it sought to levy in the total amount of \$32,076. At the conclusion of the hearing Mr. Peterson objected to the total of fines levied by the State in the amount of \$32,076. He believed that the issue was either \$17,000 approximately or \$22,000 approximately but not \$32,076. Board Counsel explained to Mr. Peterson that the amount prayed for in matters such as this before the Board are capped for a complainant at the amount set forth in the complaint. The complainant may pursue less then the amount set forth in the complaint but was otherwise limited by the total amount set forth in the complaint which in this case was as indicated \$32,076. In this case, there were four claims sought by the State in the amount of \$6,452. There was one claim sought by the State in the amount of \$2,350 and the sixth and final claim was sought and prayed for in the amount of \$3,918. These six Citations/Items totaled \$32, 076.

The State first called Jacob Hammack to testify. He set forth his rational for the gravamen of the complaint and damages in this matter. He was cross examined briefly by Mr. Peterson as counsel for the respondent.

Ms. Ortiz next called four other witnesses to be heard. They testified, were cross examined by Mr. Peterson and were further interrogated by members of the Board and Board Counsel, after which the State rested its case.

Mr. Peterson was given the opportunity to call witnesses or testify on behalf of Unified Container, LLC, a bottling plant. It was explained to Mr. Peterson in great lengths that if he did not testify and if he did not call any witnesses, the defense of the case would be limited to the record established up to this point. Without testimony, he could not argue in closing anything outside of the content of the record which had already been established. If there was a key point that had not been made in the record in the case, he could not rely upon it to argue unless he testified or he called a witness to the stand to get the key point or points in evidence before the Board to consider.

Despite numerous entreaties that it would be in his client's best interest for him to testify or call a witness to testify, or call a witness to testify, Mr. Peterson chose to rest and not testify. Mr. Peterson took the position even though it was explained to him that he would be limited in the review of his case on behalf of his client to the record established at this point in the hearing. It was explained to him further that if he testified, offering himself up as a witness in this matter, he could argue in closing based upon the record established by the State and based upon the record that he might establish through his testimony and/or the testimony of witnesses he might offer in addition to his own testimony.

Mr. Peterson said that he understood and decided that he would not testify and that he would not present any witnesses or documents for admission into evidence other than the pages that were offered and admitted into evidence at the outset of the hearing. Mr. Peterson then advised that he had no other persons he could call as a witness and he would argue the case as presented.

The Parties were given 30 minutes a side for closing arguments. The State was given an additional 15 minutes at the conclusion for rebuttal, inasmuch as the State has the burden of proof in this matter.

The Board members interrogated both sides during closing and then took the matter under advisement and deliberated. The issue which came up as an overriding consideration of the Board was the fact that respondent was forthcoming and candid in its presentation, not trying to hide or mislead as to any facts of the case. Could the Board decide to discount the fine levied to take into account the small size of the company, the fact that the Company spent \$18,000 in abatements, and the fact the company may be put out of business if assessed a large fine, thereby, taking jobs away from five employees who testified honestly, and with candor when on the stand.

The Board had at least three options before it that seemingly appeared for consideration. One was to affirm the State's case and award the levy in the amount of \$32,076. A second option was to affirm the complaint but reduce the size of the fine to be levied to a lesser amount that was more in keeping with respondent's ability to pay, if the record would support a reduction. Mr. Peterson, in closing, did not argue liability. His defense was that the fine should be reduced in keeping with the \$18,000 respondent spent on abatement.

The third option was to continue this matter, await the receipt of the transcript and have the transcript at the Board's disposal to determine whether the record would support a reduction in the fine to be levied or other disposition based on the record. Board counsel advised that under the right circumstances, the Board might have the discretion to reduce the fine, but the reduction could not be plucked out of thin air but had to have some basis in the record itself. Therefore, a motion could be in order to continue the deliberations, await receipt and review of the transcript of the hearing and then, vote, based upon the written record before the Board.

It was accordingly moved by Tyson Hollis, seconded by Gled Bautista, to continue this matter and deliberate after receipt of the written transcript of the hearing. The Motion was adopted. Mr. Peterson did not argue liability. He only wanted a reduction in the fine levied, so that it was affordable, and in keeping with the abatement amount of \$18,000 spent by the company to correct the plant defects and to provide training. Mr. Peterson did not contest the validity of the charges. The vote on the motion was 3-2, with Hollis, Fullerton and Bautista voting in favor of the motion and Spielberg and Macias voting against.

Chairman Macias then called for Item 4.

**4. (Sic) Administrative Meeting.**

- a. Approval of previous Review Board meeting minutes for January 8, 2025 and February 12, 2025.

January 8, 2025 Minutes: The Chair called for a vote of the January 8, 2025 minutes. It was moved by Scott Fullerton, seconded by William Spielberg, to approve the January 8, 2025 as read. Motion adopted. Vote: 5-0.

February 12, 2025 Minutes: The Chairman then called for the Board to consider the minutes of February 12, 2025. It was pointed out that Gled Bautista had departed the meeting early on February 12, 2025 and, therefore, should abstain from voting on the minutes of that date. It was moved by Scott Fullerton, seconded by William Spielberg, to approve the minutes of February 12, 2025, as read. Motion adopted. Vote: 4-0-1 (Bautista).

The Chairman then called 4.b., to be heard, namely the review of status conferences, contested case settlements, motions, draft decisions, for approval, rejection, or amendment and possible issuance of final orders for possible action as the Board was informed.

The Chairman then called for Item 4.b.i. (sic)

- i. RNO 25-XXXX - Pro-1 Automotive Inc.

The Chair called for consideration of this Order to be reviewed by the Board. The question was whether the Order granting the State's motion for dismissal as drafted was consistent with the action taken by the Board that heard the matter. It was moved by William Spielberg, seconded by Tyson Hollis, to approve the Order as written. Motion adopted. Vote 5-0.

The Chairman called the following status conferences for the Board's consideration and possible action.

- i. RNO 22-2165, Battleborn Patriot Inc. dba Duds N Suds of Reno; and
- ii. RNO 22-2166, Battleborn Patriot Inc. dba Duds N Suds of Reno

For both of these matters, Battleborn Patriot Inc. dba Duds N Suds of Reno, RNO 22-2165 and Battleborn Patriot Inc. dba Duds N Suds of Reno, RNO 22-2166, complaints in both cases were filed on May 6, 2022. Legal counsel for both matters is listed as Joey Gilbert, Esq. No answer was filed in either case. The Board set this matter out for 30 days as the time when the answer is to be filed. Or, if no answer is filed, Notice's of Intent to Enter Default should be filed. If neither of these takes place within the next 30 days, the cases will be dismissed.

iii. RNO 22-2173, AZZ Galvanizing-Reno, LLC

The complaint was filed in this matter on May 12, 2022. The answer was filed on May 27, 2022. The attorney listed for the respondent is Kristina Brooks. On September 7, 2023, the Board was informed that this matter had been settled. Since then, no action has been taken. The Board is giving 60 days to submit the settlement documents for consideration by the Board. If no settlement documents are provided for the Board to consider within the next 60 days, the matter will be dismissed. Calendar this matter 60 days out.

iv. RNO 23-2191, Farr Construction; Farr Construction Corporation dba Resource Development Company

The complaint was filed in this matter on November 2, 2022. The answer was filed on December 23, 2022. A notice of withdrawal of contest was filed on June 28, 2024. The Board is to draft an Order of Dismissal consistent with the notice of withdrawal of contest.

v. LV 23-2196, D&L Roofing, LLC

The complaint was filed in this matter on December 16, 2022. The answer was filed on December 28, 2022. On August 13, 2024, the Board was notified that this case had been settled and to be removed from the contested docket. Nothing has transpired in this matter since then. The parties are given 60 days in which to submit settlement documents or the case will be dismissed. Calendar this out for 60 days.

vi. LV 18-1948, Pier Construction & Development, LLC

The complaint was filed in this matter on May 31, 2018. The answer was filed on June 12, 2018. A contested hearing was held on October 20, 2018, and a Decision of the Board was drafted by Board Counsel and served on the parties on February 20, 2019. Under the procedure at that time, the Board would draft the decision of the Board and the prevailing party would draft Findings of Fact and Conclusions of Law. The Findings of Fact and Conclusions of Law have been apparently drafted but the parties cannot agree on the language in the Findings of Fact. The parties are given 30 days to submit an agreed upon Findings of Fact and Conclusions of Law. If they are unable to agree within that period of time, this matter will be set for a hearing at which time the parties will be able to argue why the Board should choose their proposed Findings of Fact and Conclusions of Law. Calendar this out for 30 days to check the renewal.

vii. LV 22-2154, Opus Prime Solutions, LLC dba Opus Prime Solutions (Fatality)

There is no answer in the record as being filed. Ms. Ortiz advised, she had an answer in her records. She is to supply the answer.

viii. LV 21-2132, Counts Kustoms, LLC

The complaint was filed on June 28, 2021. No answer was filed. On August 18, 2023, a Notice of Intent to take Default was filed. Since then nothing further has been submitted to the Board. The parties are given 60 days to either submit settlement documents or this matter will be dismissed. Calendar out 60 days.

ix. LV 14-1703, Dillard's (Status of the Appeal)

The parties have a date when oral argument will be held in this matter. Until then, the matter will continue to appear for a status conference until either the parties, the court or the Board comes up with a resolution that will remove this matter from the status conference docket.

Chairman then called Item 4 (sic) c to be heard.

i. General administration and/or procedural issues.

There was no discussion.

ii. Discussion regarding Senate Bill 78.

The Chairman said that this will continue to appear on the calendar to deal with until the Legislature resolves the issue one way or the other. It was the Chairman's understanding that SB 78 is being redrafted and will exempt the Board of Review from the application of SB 78, which eliminates designated or denoted Boards and Commissions.

iii. Old and New Business.

Board member Scott Fullerton advised that his term will conclude with the meeting in June 2025. He is not a candidate for reappointment and, therefore, the Board needs to seek a replacement Board member Scott Fullerton.

iii. (sic) Discussion of Pending Cases.

No discussion took place.

d. Schedule of Hearings on Pending Cases, Calendar and Status Report.

The Board Chairman went down the list of dates for hearing of the Board for the rest of 2025, other than Scott Fullerton retirement from the Board, no Board members advised that they were unable to be present for any of the meetings listed.

5. Board Chairman called Item 5 to be heard, Public Comment.

The Chairman then called this item to be heard. There was no public comment offered at the meeting and Board Counsel advised that his office received no public comment during the course of the meeting.

6. Adjournment.

The Chairman then called for this matter to be heard. It was moved by Scott Fullerton, seconded by William Spielberg, to adjourn the meeting. The motion was adopted by a Vote of 5-0, meeting adjourned.

Dated this 9<sup>th</sup> day of April, 2025

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

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