

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

**October 12, 2022**

**Frank Milligan (Public at Large)**  
**William Spielberg (Labor)**  
**Jorge Macias (Management)**  
**Scott Fullerton (Labor)**

Acting Board Chairman William Spielberg called the meeting to order at approximately 9:10 a.m., on October 12, 2022.

On October 12, 2022, 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, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada, 89102. Acting Board Chairman William Spielberg called the meeting to order at approximately 9:10 a.m., on October 12, 2022. The Board convened at the Division of Industrial Relations offices located at 3360 West Sahara Avenue, Suite 175, 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.

**1. Roll Call.**

Board members present were: William Spielberg, acting Chairman, Frank Milligan, Scott Fullerton and Jorge Macias. Chairman Rodd Weber was absent from the meeting for work related reasons. As four members of the Board were present for the meeting, including two members representing labor and one member representing management, a quorum was present for the Board to conduct its business.

Also present by Webex was Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations, appeared personally as did Dalton Hooks, Esq., of Hooks, Meng & Clement.

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, Nevada, 89102

This Notice was also posted at the following website addresses:

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

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

## **2. Public Comment.**

Acting Chairman Spielberg called this matter. There was no public comment offered at the meeting and Board Counsel advised that his office had not received any written public comment prior to the commencement of the hearing.

## **3. Contested Case Hearings.**

Acting Chairman Spielberg called Item 3(a) LV 18-1940, Las Vegas Paving Corp., to be heard.

The evidentiary portion of the hearing on this matter had been concluded. Left to finish the matter were closing arguments and deliberations. The complainant, State, was represented at the hearing by Salli Ortiz, Esq. The respondent, Las Vegas Paving Corp., was represented by Dalton Hooks, Esq., of Hooks, Meng & Clement. Before the commencement of oral argument, Dalton Hooks distributed to the Board members a copy of Exhibit P, map of project site, page 657 of the Respondent's Second Supplemental evidence packet. He also distributed Exhibit Q, Subcontractor Agreement for: Olson Precast Company, pages 658-728. Las Vegas Paving Corporation was the other party in the contract for the job at issue in this matter. These two exhibits P and Q were admitted without objection into evidence, although it also appears that they were admitted into evidence during the evidentiary hearing on this matter.

Salli Ortiz then gave her closing argument, followed by Dalton Hooks' argument. Ms. Ortiz then gave a brief rebuttal to Mr. Hooks. At the conclusion of her rebuttal argument, the Chairman offered Mr. Hooks the opportunity to rebut, which he declined, as the State gets the last word as the moving party.

At the conclusion of the closing arguments, the Board then deliberated. It determined that the State had shown by a preponderance of the evidence that Las Vegas Paving Corp. was the controlling employer in connection with this fatality incident at the job site. The Board then concluded as a result respondent had an obligation to provide a safe workplace for the injured worker in connection with this incident, that Las Vegas Paving Corp. had not discharged its responsibility in a reasonable manner and, therefore, a *prima facie* case of a violation of 29 CFR § 1926.501(b)(4)(i) had been shown. In connection therewith, the Board determined that 29 CFR § 1926.501(b)(4)(i) was the applicable regulation as the offending condition was a "hole" rather than an excavation and that, therefore, Las Vegas Paving Corp., had failed in its obligation to provide "[e]ach employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than six feet (1.8 m) above lower levels by personal fall arrest systems, covers, or guardrail systems erected around such holes."

Each of the Board members had considerable input into the debate over whether there was violation of 29 CFR § 1926.501(b)(4)(i). It was accordingly moved by Jorge Macias, seconded by William Spielberg, to affirm Citation 1, Item 1, of the State's complaint. The motion was adopted on a vote of 4-0. Respondent is accordingly required to pay the proposed penalty of \$6,300, for Citation 1, Item 1, and to abate any violated conditions if any remain.

Acting Chairman Spielberg, then called Item 3(f) to be heard, LV 22-2162, Sands Expo & Convention Center, Inc., to be heard. Board counsel inquired as to whether anyone was present on behalf of Sands Expo, whereupon Ms. Ortiz advised that they are not present because the case had settled and that the last language in the settlement agreement was being worked through as of this moment. Board counsel advised that was the first that either he or his office had heard that the Sands Expo matter had settled. During the recess, Board Counsel checked his e-mails and his assistant checked all of her e-mails. No such notification had been received from the Complainant that the Sands matter had settled. In any event, the Board took a 15 minute recess whereupon it reconvened to hear the Administrative portion of this date's Agenda, given the representation that the Sands matter settled.

4. Administrative meeting.

- (a) Approval of the previous Review Board meeting minutes of July 13 and 14, 2022.

It was moved by Scott Fullerton, seconded Frank Milligan, to approve the July minutes as read. **Motion adopted.**

**Vote: 4-0**

Acting Chairman Spielberg then called Item 4(b) i. to be heard, consisting of Board approval, rejection or modification of draft Decision of the Board for the following:

1. Docket No. LV 19-1986, Club K9, LLC;
2. Docket No. RNO 19-998, Bains Motel;
3. Docket No. LV 20-2027, Compass Equipment Services of NV, LLC; and

4. Docket No. LV 19-1997, Capriati Construction Corp., Inc.

Board Counsel pointed out that as for these four matters, there had been a change over in personnel for the Board. The new Board members, however, had been provided the file that was before the Board when these matters were heard for each of the four case and that, therefore, the entire Board was eligible to vote on this matter. It was accordingly moved by Frank Milligan, seconded by Scott Fullerton, to approve the draft decisions in each of the aforementioned cases, as accurately reflecting the action of the Board. **Motion adopted.**

**Vote: 4-0**

The Acting Chairman then called 4(ii) to be heard, which is the Consideration and Withdrawal of Citation and Complaint/Settlement for the following:

- (1) LV 21-2120, Mesquite Gaming LLC dba Virgin River Hotel and Casino; and
- (2) LV 20-2007, Total Western, Inc.

For these two matters, it was moved by Frank Milligan, seconded by Scott Fullerton, to affirm the withdraw of the Citation in each of the, hence, settlement of each of the two cases. **Motion adopted.**

Subsequent to the hearing, however, it was learned that the parties to these two matters had not be noticed. These items will appear on the next Agenda to be disposed of after proper notice is given.

**Vote: 4.**

**(c) General administration and/or procedural issues.**

Acting Chairman Spielberg called these matters to be heard.

- i. General matters of import to Board members.

There was no discussion.

- ii. Old and New Business.

Under this item, Frank Milligan asked if the issue regarding the posting of the Agenda(s) had been resolved. Board Counsel advised that this issue had been resolved since the last meeting of the Board. There was no other discussion under Old and New Business.

- iii. Discussion about Board Legal Counsel's Contract, Select and Employment of Board Legal Counsel.

Acting Chairman Spielberg asked for an update from Board Counsel and Tori Carreon. Ms. Carreon advised that Board Counsel's Contract had been extended through the end of

December of 2022. That contract was in the process of being executed and that no action had been taken beyond December 31, 2022.

Board Counsel updated further by advising that Board Chairman Rodd Weber had arranged for and was awaiting the setting of a meeting amongst the Board Chairman, Terry Reynolds and Board Counsel about the extension of the Contract beyond December 31, 2022. Board Counsel advised that he also agreed that the extension, up to, and including, December 31, 2022, was awaiting approval by the Board of Examiners, namely the Governor, Attorney General and Secretary of State.

The Board members then made clear that they were anxious to hear what the status was and expected to hear in advance of the November meeting so that if there is action by the Board that needs to be taken, the Board members will be informed and have the time to address the situation.

- iv. Discussion of the Board's Status Report, Disposition of Decisions and Findings of Facts.

Board Counsel advised that the Status Report had been e-mailed to each of the Board members this date, because of the understanding that hearings would last for two days, rather than just one day, in light of the Sand Expo case. The Status Report is available to the Board Members presently and will be available to discuss at the November 2022 Board meeting.

- v. Discussion of adding a Consent Section to the Agenda, wherein all consent items may be approved together with a single motion, be taken out of order, and/or be heard and discussed individually. Items will be removed and considered separately at the request of the public or Board members.

Acting Chairman Speilberg called this matter to be heard. Board Counsel advised that he inserted this item on the Agenda. He did this because the State had inundated the Board with a back log of the cases wherein the State has changed its mind and decided against prosecuting cases it had filed, served and let sit there on the Board's docket awaiting the State to either prosecute or take a default. Because they have been filed and are on the docket, they must ultimately be disposed of by the Board. The State, as indicated, decided not to default and instead, to withdraw the cases and ask the Board to join in this process by agreeing to dismiss these cases as moot. If the Board chooses to acquiesce in the process, it may be done in summary fashion on the Consent Agenda. Board members could review in advance of the meeting, the complaint, summons, order of dismissal and proof of services of the summons and complaint, that will have been placed on the Consent Agenda for the meeting. Then, when the Consent Agenda is called, if one or more Board members have an issue with one or more of the matters on the Consent Agenda, an objection or objections could be made and the case or cases the subject of the objection would be pulled from the Agenda to be heard at a later date. For those matters still on the Consent Agenda, they would then be approved by a single motion. In this manner considerable business can be taken care of quite expeditiously if the process, here, is approved by the Board. Board Counsel informed the Board that in his opinion, a Consent Agenda item would not violate the Nevada Open Meeting law. For example, the Reno Housing Authority routinely includes a Consent Agenda item on its Agenda for Commission meetings.

Accordingly, it was moved by Scott Fullerton, seconded by Jorge Macias, to approve the inclusion of a Consent Agenda item on the Board's regular Agenda. **Motion adopted.**

**Vote: 4-0.**

(d) Schedule of hearings on pending cases, calendar and status report.

First, Board Counsel advised that meetings for January 11/12, 2023, February 8/9, 2023 and March 8-9, 2023, would be held in Las Vegas. The Board schedules hearings in Reno when there is a sufficient number of cases justify transacting business in Reno. In all likelihood, it would not be until the April Board meeting that there would be a sufficient number of Reno cases to justify meeting in Reno in light of the fact that the December 14 and 15, 2022 meeting of the Board will also be conducted in Reno, Nevada.

Salli Ortiz then asked the Board if it was possible to move the February 8 and 9, 2023, meeting to a different date, as she would like to be able to attend a conference of Government attorneys who handle OSHA matters for their respective jurisdictions. It is the one time in a year that Government attorneys are able to gather and confer on OSHA matters. Acting Chairman Spielberg said he thought it would be best to table Ms. Ortiz's request until the November 2022 meeting of the Board, when all of the Board members would be present with their calendars before determining when to reset the February 8 and 9, 2023, meeting of the Board. This matter will appear on the Agenda for the November meeting of the Board.

The Board undertook a lengthy and earnest discussion of the scheduling of cases to be heard to avoid situations such as this date when the meeting is scheduled for two days but there is only enough business for one day and the second day then goes to waste, keeping Board members from conducting business that they might otherwise have been able to transact if they knew that the second day would not be conducted as noticed. Suggestions included adding on occasion a third day for a meeting conducted by Webex, the conduct of all meetings by Webex, the segregation of easier cases to be bundled and heard at one time in summary fashion, and setting more cases on the Agenda so that even if a large number of cases are settled, there would still be enough cases left on the Agenda to consume two days of hearings. Ms. Ortiz indicated that this latter suggestion could create problems for her inasmuch as if a matter appears on the Agenda she must prepare the witnesses and documents for the hearing on the matter in the event that cases on the Agenda settle, leaving those cases set later on the Agenda to be heard. Acting Chairman Spielberg concluded that this matter should be tabled and agendaized for discussion at the next meeting of the Board in November 2022. Board Counsel asked what should this item be titled on the Agenda. Acting Chairman Spielberg said that it should be entitled "Utilization of Scheduled Dates to the Fullest." This item will appear on the November Agenda.

## 5. Public Comment.

Acting Chairman Spielberg called this item to be heard. He said that there was no public comment from the public at the hearing. Board Counsel advised that his office had received no written communication in the form of public comment during the course of the meeting on this date.

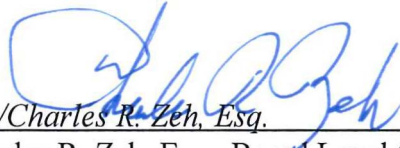
6. Adjournment.

It was moved by Frank Milligan, seconded Scott Fullerton to adjourn the meeting.  
**Motion adopted.**

**Vote: 4.0.**

The meeting was adjourned.

Dated this 9<sup>th</sup> day of November, 2022.

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