

MINUTES OF THE MEETING OF
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library
25 East Shelbourne Avenue
Las Vegas, Nevada
Wednesday, May 11, 2016
Commencing at 10:00 o'clock a.m.

PRESENT

Joe Adams (management)
James Barnes (public)
Nicole Baker (labor)
Steve Ingersoll (labor) (telephonically)
Sandra Olson (management)
Frank Milligan (alternate)
Fred Scarpello, Esq., Legal Counsel

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., May 11, 2016. 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.

The Chairman identified contested cases noticed and set for hearings, but continued to the June schedule, as follows, docket no. **LV 16-1832**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Earth Resource Group, **LV 16-1833**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Coyote Springs Golf Operations, LLC.

The Chairman called for commencement of the Board administrative meeting and referenced the posted/published agenda incorporated in these minutes as attached.

The minutes of the previous board meeting were approved as distributed based upon motion of Mr. Adams, second by Mr. Barnes and unanimous vote of all Board members present.

The Board reviewed the second agenda item regarding scheduling of hearings, pending matters, contested hearing docket calendar, and status report.

General discussions occurred regarding the substantial number of case settlements/resolutions and reduction of contested matters for hearings. The Chairman noted the current schedule of two contested matters on the June 8th and 9th Las Vegas hearing docket, and one case scheduled for the Reno venue on July 13th and 14th. The Board discussed availabilities for attendance to assure satisfaction of the quorum at the forthcoming contested hearings and meetings. Labor representative Ingersoll indicated he may not be available in June. Labor representative Baker noted potential conflicts with that date but indicated she would try to arrange her schedule to accommodate part of the day. The members discussed the potential for one or even both cases being settled which may accommodate Ms. Baker's scheduling conflict. Counsel was instructed to monitor the member schedules to assure a quorum at the June meeting.

Item C of the published agenda noted review of contested case settlements pending on the status for approval and issuance of final orders and possible final action. The Board reviewed docket nos. LV 16-1828, Apex Electric; LV 16-1842, Badger Construction; LV 16-1823, Lacy Gibson and LV 16-1836, Nevada Pipeline, and on motion by Ms. Olson, and second by Mr. Barnes, the Board approved the issuance of final orders to dismiss the cases based upon the case resolutions, noting each had satisfied the threshold criteria to support Board approval. The motion was unanimously approved. Counsel was instructed to effectuate service of final orders on all parties.

The Chairman noted agenda item D regarding the report by he and chair-elect Barnes on the Sunset Subcommittee meeting "work session." He confirmed the follow on subcommittee "work session" meeting was brief and reflected no subcommittee changes proposed for the Review Board. No questions or challenges were made by any member of the subcommittee at the work session meeting. He further reported chairman Settlemeyer of the subcommittee thanked the Board for its work, the thorough presentation, and continued service by the Review Board for the citizens of Nevada.

The Chairman noted item E on the agenda - review of Chapter 241, Nevada Open Meeting Law compliance, issues, electronic recording certified stenographic recording/ transcription, and the policy for Board member telephonic attendance limited to only the administrative portion of meetings.

Counsel confirmed that after statutory review, telephonic attendance by a Board member is equivalent to personal attendance for the purposes of a quorum. The Board again noted its previous decision and reconfirmed the voted policy that telephonic

attendance is permitted by a Board member for only administrative meetings and not contested hearings.

The Board discussed issues of stenographic recording/transcription and/or electronic recordings of meetings for compliance under NRS Chapter 241. The use of electronic recording was discussed at length. Board members Barnes and Olson described their personal experiences as lawyers with attempting to understand, or even decipher, many audio recordings of public meetings, due to the difficulties of electronic devices clearly reflecting the discussions, conversations, voice-overs, and interruptions. Members also noted experienced difficulties when listening to voice recordings to understand who was speaking as the speakers often times do not identify themselves or fail to control interruptions when a discussion or debate occurs.

On motion by Mr. Barnes, and second Mr. Adams, the Board members present unanimously agreed to rely on certified stenographic reporting/transcription rather than electronic voice recording. Counsel advised the Board action for compliance and policy conforms with the mandates of NRS Chapters 241, 618, 233B and NAC Chapter 618.

Item F on general administration and/or procedural issues was subject of discussion. Counsel referenced the two cases on the current June contested hearing calendar and noted no administrative matters "for possible action" currently pending. Should both contested cases settle, a June administrative meeting could become doubtful. Counsel suggested the Board consider conducting its annual internal election for the offices of Chairman and Secretary due to the term of current chair Adams expiration on June 30. The Board could conduct the election today, but reserve the final approval/"action" after inclusion on the next published meeting agenda.

On motion by Ms. Olson to reconfirm chair-elect Jim Barnes as Chairman, and second by Mr. Adams, all Board members present voted unanimously. Member Barnes will formally assume the position of Chairman commencing July 1, 2016. After discussion of the Board Secretary position, and member Baker indicating the lack of time to commit to serving in that capacity, a motion was made by Ms. Baker to re-elect current Secretary, Steve Ingersoll to again serve as Board Secretary. The motion was seconded by Mr. Barnes, and all Board members presented voted unanimously to re-elect Steve Ingersoll as Board Secretary. The new term would commence on July 1, 2016.

Counsel raised consideration for the role of an "acting Chairman" and interest by any members willing to chair a contested

hearing or meeting and assume the related interim responsibilities in the absence of Chairman Barnes. The role is not required by NRS/NAC Chapters 618 but traditionally designated to principally assure responsibilities for and at contested hearings. After discussion, and an offer by member Olson to serve, she was nominated by Mr. Barnes, seconded by Ms. Baker, and unanimously endorsed to chair meetings in the absence of Chairman Barnes as an acting Chairman commencing July 1, 2016.

Chairman Adams referenced item I on the completion of his term and consideration by the Board for any recommendations to the Governor's office to fill his vacancy after June 30, 2016. Board members discussed the need for a qualified individual with a recognized background in occupational safety and health law and/or practice. Board member Adams reiterated his previous recommendation of an experienced individual, member of the AGC, and a recognized management representative from northern Nevada who could serve the Board in that capacity. Mr. Adams indicated the individual was willing, had already submitted his application to the Governor's office, and well known by Mr. Adams as experienced, capable and of good temperament.

Board member Olson stated she would prefer applications also come from the general public and that she already recommended the ABC publish information on its website for the availability of the management representative position.

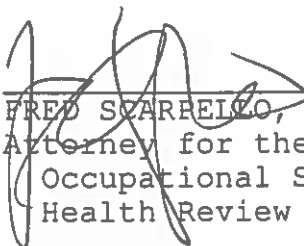
The members discussed the historical recognition of Board membership balance between the northern and southern parts of the state. Board member Ingersoll stated that regardless of the identity of the individual appointed, he believed the historical respect for the balance between the north and the south was important because construction safety and other work site aspects differ between the larger Las Vegas and smaller northern Nevada areas. He stated work site experience by Board members with the regional balance brings a better perspective to the Board. Mr. Ingersoll voiced his firm support for the north/south membership balance. Members Adams, Barnes and Baker concurred.

Board member Olson disagreed and indicated the north/south distinction not being legally required was not that significant. She stated her preference to make no Board recommendation for appointment and applications left open to any interested qualified individuals. Ms. Olson further suggested that alternate public member Milligan might consider submitting an application to fill the management representative position similar to what she had done. After continued discussion, it was agreed that no formal written recommendation would be made by the Board to the Governor's office to fill the vacancy. The members agreed that any member

could make, or already has made, suggestions to individuals or organizations for submittal of applications. Board alternate Milligan indicated he would consider the matter and decide whether he would submit an application for the management representative vacancy.

Board members noted the June 30 term expiration and long service of Chairman Adams. All extended appreciation for the extra efforts, and professional administration of contested hearings during his tenure.

There being no further business before the Board the meeting was adjourned on motion by Board member Olson, seconded by Board member Ingersoll and on unanimous vote adjourned at approximately 11:30 a.m.



FRED SCARRELO, ESQ.
Attorney for the Nevada
Occupational Safety and
Health Review Board