

THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

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

Wednesday, February 14, 2018

PRESENT

Steve Ingersoll (labor)
James Halsey (labor)
Sandra Roche (management)
Rodd Weber (management)
Frank Milligan (alternate public)
Fred Scarpello, Esq.,
Legal Counsel

Thursday, February 15, 2018

PRESENT

Steve Ingersoll (labor)
James Halsey (labor)
Sandra Roche (management)
Rodd Weber (management)
Fred Scarpello, Esq.,
Legal Counsel

ABSENT

Frank Milligan (alternate public)

Wednesday, February 14, 2018

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the Review Board at 10:00 o'clock a.m., Wednesday, February 14, 2018. The notice of meeting was duly provided to all parties and posted pursuant to 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. Chairman-Elect, Mr. Steve Ingersoll, confirmed a lawful quorum of members present.

The Chairman announced the contested hearing calendar and identified the cases scheduled for hearing on the published public agenda notice. Chairman Ingersoll noted an advisory of settlements in docket no. LV 18-1911, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. MJL 12, LLC, aka MJ LIVE 12, LLC and LV 18-1925, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Blitz Development, LLC, dba Quality Carpentry. The Chairman instructed the identified cases be included on the weekly status report and diaried for receipt of settlement documentation for approval review in accordance with the NAC 618 and Board rules.

The Chairman called the Board to order for hearing of the first contested matter, namely docket **LV 17-1874**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders. He recognized the appearance of division legal counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry; and Mr. Rick Roskelley, Esq. on behalf of respondent, Performance Builders.

Documentary evidence, witness testimony and closing arguments were presented during the course of the hearing. The hearing was concluded and the case submitted at approximately 5:00 p.m.

Chairman Ingersoll noted the hour and requested Board members consideration for conducting case discussion at the conclusion of the Thursday, February 15th hearing calendar to allow sufficient time for deliberation and decision. Board members agreed. The Chairman announced to all in attendance the continuation of the meeting of the Review Board and matters to be subject of the Thursday agenda, including deliberation and decision as to docket LV 17-1874. On motion, second and unanimous vote the Board meeting was adjourned at approximately 5:15 p.m.

Thursday, February 15, 2018

The Chairman convened the scheduled meeting of the Nevada Occupational Safety and Health Review Board at approximately 10:00 a.m. on Thursday, February 15, 2018. The Chairman announced the remaining matter on the contested hearing agenda identified as docket **LV 17-1907**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders. The Chairman recognized the appearance of division legal counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry; and Mr. Rick Roskelley, Esq. on behalf of plaintiff, Performance Builders.

Documentary evidence, witness testimony and closing arguments were presented during the course of the hearing. The presentation was concluded and the case submitted at approximately 4:00 p.m. The Chairman called for discussion and deliberation of the contested matter. Members reviewed and discussed their hearing notes, pleadings, photographic exhibits, documentary evidence and referenced the cited standard and applicable law. After reviewing

the burden of proof to find a serious violation, then considering the classification of Willful and the proposed penalty, a final question for the vote was called. The Board voted three members to find the violation, classification and penalty as cited, with one member dissenting (3-1).

The Board directed counsel to draft and circulate the proposed decision for study, comment, edits, and review prior to final issuance.

The Chairman noted the lateness of the hour, at approximately 5:00 p.m. and the need to complete the agenda, including deliberation and vote as to the case heard the previous day, February 14th, namely docket LV 17-1874, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Performance Builders. After discussion, the Board referenced noted the poll taken the previous day when all Board members, including Mr. Milligan, were present as to Citation 1, Item 1, but no polling as to Citation 1, Item 2. Counsel noted that no official decision has been rendered, therefore a formal action required on both issues after discussion, deliberation, motion and vote. Two Board members indicated they would like to review the transcript, particularly as to the second citation, prior to reaching a decision, and also allow sufficient time for further discussion and deliberation. The Chairman also noted that it would be courteous to review the entire matter at the next public meeting to permit Board member Milligan, who was in attendance for the actual hearing, to participate in the final deliberations and decision. The Chairman instructed counsel to forward the transcript as soon as received so the Board members could study the testimony; and include the case **for possible action** on the agenda for the next meeting.

The Board conducted a brief administrative meeting, again noting the limited time due to lateness of the hour as follows:

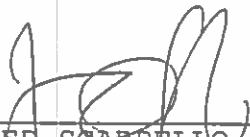
On motion, second and unanimous vote the previous Review Board minutes were approved as distributed.

Counsel noted the March calendar was heavily "stacked" with no possibility of hearing all the cases. Members recalled the stacking resulted due to moving the January calendar forward to allow time for new Board counsel to become involved and more efficiently participate in both the hearing and the decision drafting processes. Counsel advised he would forward an updated status memorandum on the hearing issues and make recommendations for rescheduling some of the March calendar cases to allow reasonable hearing time.

Counsel commented the legal contract has not yet been resubmitted for BOE approval; however continued review underway to reach conclusion.

No members of the public were present to request comment.

On motion, second and unanimous vote the Review Board meeting adjourned at approximately 5:20 p.m.



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