

**STATE OF NEVADA
Review Board for the
Nevada Occupational Safety and Health**

Meeting Minutes for August 8, 2018

Present

Steve Ingersoll (labor)
James Halsey (labor)
Sandra Roche (management)
Rodd Weber (management)
Frank Milligan (public at large)

On August 8, 2018, a meeting of the Nevada Occupational Safety and Health Review Board was convened. The meeting took place at 4600 Kietzke Lane, Building B, Suite 111, Reno, Nevada.

1. Roll Call.

Chairman Ingersoll called the meeting to order at approximately 9:00 a.m. 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.

Also in attendance at the meeting in person were Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations (DIR), Bruce R. Mundy, Esq., Counsel for the Respondent, Reno Forklift, Inc., Ray Fiero, Acting Director, DIR, and other members of the public, as well as possible witnesses to the contested case or cases noticed for this meeting. Notice of the meeting was posted, published or served electronically consistent with the requirements of the Nevada Open Meeting Law.

2. Public Comment.

There was no public comment.

3. Contested Cases.

a. RNO 17-1896, Reno Forklift, Inc.

Board Chairman Ingersoll called to be heard the case of 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, vs. Reno Forklift, Inc., Respondent. Docket No. RNO 17-1896, Inspection No. 1206644.

Board Chairman Ingersoll asked Board Counsel to set the record for this hearing. Once the record was set, Board Chairman Ingersoll asked the parties to begin, after recognizing the appearance of Salli Ortiz, Esq., Division Counsel, for the complainant and Bruce R. Mundy, Esq., for the Respondent. Jake LaFrance, Northern District Manager, NVOSHA, sat at counsel table for the complainant. George Pempl, Vice-president, Reno Forklift, Inc., sat at counsel table for the respondent.

At the outset, complainant's Exhibits 1 through 3 were admitted into evidence without objection. They consist of 104 pages of documents, records and photographs. Respondent offered Exhibit A, consisting of excerpts of 29 CFR 1910.147, for admission into evidence. It, too, was admitted without objection. During the course of the hearing, Exhibit 4, the entirety of 29 CFR 1910.147 was offered by complainant's counsel for admission into evidence. Exhibit 4 was admitted into evidence without objection.

Ms. Ortiz waived opening statement. Mr. Mundy presented his opening statement.

The complainant, through counsel, Salli Ortiz, Esq., then proceeded first and offered two witnesses. After presenting those two witnesses and their cross examination and several rounds of further direct and re-cross, the complainant rested. By then, the noon hour had approached and the Board adjourned for its noon lunch break.

Following lunch, the Board reconvened and the respondent presented its defense through two witnesses. After presenting these two witnesses and their cross examination and several rounds of further direct and re-cross, the respondent rested. The parties gave their closing arguments and the matter was, therefore, submitted.

Chairman Ingersoll advised the parties that the Board would take the matter under submission and then render its decision after deliberations which would take place in an open meeting before the public. Once the Board's decision is announced, Board Chairman explained that it would be reduced to writing by Board counsel, and upon approval of the written decision of the Board, it would then become the decision of the Board.

The Board then briefly adjourned. After this brief recess, Chairman Ingersoll reconvened and continued on with the contested portion of the Board's agenda. He announced that contested hearing on D7 Roofing Services, RNO 18-1922, had been vacated prior to this date as the matter had been settled. As is the practice of this Board, Salli Ortiz will be expected to prepare a final order for the Board to review and approve, concluding this matter. Meanwhile, this matter will be included on the Board's status report to track its progress towards final disposition.

Chairman Ingersoll then announced further that the hearing on the Scougal Rubber matter, RNO 18-1947, also scheduled for this date had been vacated upon the representation of Chief Administrator's legal counsel, Salli Ortiz, Esq., that this matter had also been settled. It was moved by Frank Milligan, seconded James Halsey to vacate the matter for further consideration when the settlement documents are prepared and ready for review by the Board. The motion was unanimously adopted on a vote of 5 in favor and 0 against. As is the practice of

this Board, Salli Ortiz will be expected to prepare a final order for the Board to review and approve, concluding this matter. Meanwhile, this matter will be included on the Board's status report to track its progress towards final disposition.

4. Administrative Meeting.

The Chairman then called the administrative portion of the meeting, next to be heard:

- a. Approval of Review Board minutes for April 11, 2018 and June 29, 2018.

It was moved by Frank Milligan, seconded by Rodd Weber, to approve the minutes for April 11, 2018 and June 29, 2018, as read. **The motion was adopted.**

Vote: 5-0

- b. Review contested case settlement, motions, draft decisions, or procedural issues pending on the status report, for approval and issuance of final orders:
 - i. LV 18-1931, Crescent Hotels.
 - ii. RNO 18-1928, XL Concrete Masonry.
 - iii. RNO 18-1651, Martin Iron Works.

The Board reviewed notices of withdrawal, proposed final orders and settlements for Crescent Hotels, LV 18-1931, and XL Concrete Masonry, RNO 18-1928. The Board also reviewed the withdrawal of the Martin Iron Works matter, RNO 18-1651, based upon additional information supplied and the order of dismissal in that case. The Board determined that the information submitted and the rational supplied either met or was satisfactory to meet the Board criteria for compliance with NAC 618. Upon motion of James Halsey, seconded by Frank Milligan, the Board unanimously voted to accept and approve the dismissal and issuance of final orders, as pertinent, in all three of these matters. **Motion adopted.**

Vote: 5-0.

- c. General administration and/or procedural issues.

Board members provided no additional information.

- d. Schedule of hearing on pending cases, calendar and status report. Next scheduled meeting: September 12 and 13, 2018, at the Enterprise Library in Las Vegas, Nevada.

Chairman Ingersoll called this item on the agenda to be discussed. The hearing dates as calendered will remain unchanged, *i.e.*, the next regularly scheduled meeting will be conducted on September 12 and 13, 2018, at the Enterprise Library in Las Vegas, Nevada. A discussion ensued, however, about the location of the meeting. Some dissatisfaction about the facilities or location of the Enterprise Library was expressed. The State of Nevada offered its conference

rooms at their new location in Las Vegas for hearings when conducted, there. The Chairman and/or Board Counsel are to explore that option and report back at the September meeting of the Board.

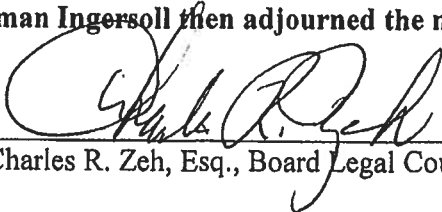
Board Chairman Ingersoll then directed the Board to return to the contested matter, Reno Forklift, Inc., for deliberation and disposition.

The Board evaluated the testimony, evidence and argument of each counsel. A vigorous debate ensued as the Board members reviewed and discussed the pleadings, exhibits, hearing notes and elements for finding a violation under the established burden of proof. The facts of the case were thoroughly reviewed, analyzed and discussed, as well. After deliberations, a final question for the vote was called. The Board reached a decision subject to the drafting, edits, additional legal research and final review as follows:

It was moved by Rodd Weber, seconded by James Halsey, to affirm the violations as alleged in the complaint, affirm the classification of the offenses as serious and approve the proposed penalty in the amount of \$4,000, as prayed for by the State in its complaint. The vote on each individual paragraph of the complaint was taken and in each instance, it was moved by Mr. Weber, seconded by Mr. Halsey, to find for the State on paragraphs A, B, C and D and the civil penalty of \$4,000. All four motions were affirmed upon a vote of 4 in favor of the motion and 1 against with member Roche, dissenting, in each instance.

As is also the practice and statutory requirement of the Board, Board counsel will prepare, draft and circulate the proposed decision for study, comment, edits and review prior to final issuance.

This concluded the items on the Agenda for this meeting. A motion to adjourn was requested by Chairman Ingersoll. It was accordingly moved by Rodd Weber, seconded by James Halsey to adjourn the meeting. **Chairman Ingersoll then adjourned the meeting.**
Vote: 5-0.



Charles R. Zeh, Esq., Board Legal Counsel

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