

STATE OF NEVADA

**Review Board for the
Nevada Occupational Safety and Health**

Meeting Minutes for September 12, 2018

Present

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

On September 12, 2018 at approximately 10:03 a.m., Board Secretary, Rodd Weber called the meeting to order of the Review Board for the Nevada Occupational Safety and Health. As Chairman Steve Ingersoll was absent, and the only other officer of the Board is the Board Secretary, Rodd Weber proceeded to Chair the meeting as the Acting Chairman, standing in the stead of Chairman Ingersoll. The Board meeting took place at the Las Vegas-Clark County Library District, Enterprise Library, 25 East Shelbourne Avenue, Las Vegas, Nevada.

1. Roll Call.

Acting Chairman Weber called the meeting to order at approximately 10:03 a.m. The meeting was duly noticed to be held according to Chapter 618 of the Nevada Revised Statutes and according to Chapter 241 of the Nevada Revised Statutes, the Nevada Open Meeting Law (OML). A copy of the notice with proof of postings is attached to these minutes and made a part hereof as though fully set forth herein.

In attendance at the outset of the meeting were Acting Chairman Weber and members James Halsey and Frank Milligan. As one member of labor and one member of management on the Board were in attendance and as three members constitute a quorum of the Board, the statutory conditions for a quorum were met and the Board was able to proceed to conduct the Business of the Board.

Also in attendance at the meeting 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), Jess Lankford, Chief Administrative Office, OSHA, and John Wiles, Esq., Hooks Meng Schaan & Clement. Notice of the meeting was posted, published or served electronically consistent with the requirements of the Nevada Open Meeting Law.

2. Public Comment.

Acting Chairman Weber called this item to be heard. John Wiles, Esq., stated that in his capacity as a member of the public but also as one who has appeared before this Board

and served as Chief Counsel to the DIR, he, first, wanted to acknowledge the over 40 years of service to this Board given by Fred Scarpello, Esq., the past Board legal counsel. Mr. Wiles also stated that he wanted to commend the Board for its patience and perseverance in the effort to locate counsel to replace Mr. Scarpello upon his retirement as Board legal counsel. Mr. Wiles also congratulated the Board upon its selection of new Board legal counsel, as Mr. Wiles advised that he and Mr. Zeh were members at one time of the same law firm, and then, Mr. Wiles worked with Mr. Zeh for a lengthy period when Mr. Wiles was Chief legal counsel to the Director, DIR, and Mr. Zeh was Board legal counsel to the two State Subsequent Injury Boards.

There was no further comment from the public following these remarks by Mr. Wiles.

Member Sandra Roche then joined the meeting and all four Board members participated throughout the balance of the meeting.

3. **Contested Cases.**

Acting Chairman Weber then called this item to be heard. Well in advance of the meeting, Board members were informed that the two "The Original Roofing Company" matters, case numbers LV-18-1919 and LV-18-1920, had been resolved prior to the meeting, subject to Board review and approval of the disposition of these two cases.

Acting Chairman Weber then informed the Board that the remaining three contested cases had also settled according to an e-mail late Tuesday afternoon, September 11, 2018, from Division Counsel, Salli Ortiz. These three contested cases are: Focus Plumbing, LV 18-1929, Nye County, LV 17-1908, and Martin Thompson, DDS, Ltd., LV-18-1920. Their disposition will also be subject to Board review and approval of the terms and conditions of settlement and/or withdrawal of the three cases. Acting Chairman Weber confirmed with Salli Ortiz, Esq., that these three matters were, in fact, resolved. She informed the Board that she had letters from each of the respondents in these three matters, confirming acceptance of the settlement offers made by the Division.

The Board accordingly, was able to move along to the next item on the Agenda.

4. **Administrative Meeting.**

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

- a. Approval of Review Board Minutes for August 8, 2018.

Acting Chairman Weber called for this item to be heard. There were no additions, corrections or omissions to the minutes and it was accordingly moved by James Halsey, seconded by Sandra Roche, to approve the minutes as read. **Motion adopted.**

Vote: 4-0.

- 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 18-1921, TAB Contractors.

Acting Chairman Weber called for this item to be considered. There was one case for review by the Board under this heading, Tab Contractors, LV-18-1921. It was moved by James Halsey, seconded by Frank Milligan, to approve the disposition of this matter.
Motion adopted.

Vote: 4-0.

- c. General administration and/or procedural issues.

Acting Chairman Weber called for consideration of this matter. Board legal counsel advised the Board of two matters. One was Sierra Packaging & Converting, RNO-14-1684. The Board's decision was first appealed to the District Court in Carson City and then, to Nevada's Court of Appeals, where the Court of Appeals reversed the decision of the Board, finding that the Board had applied an incorrect legal standard in deciding the case against the respondent. As legal error, according to the Court of Appeals, had been committed, the decision could not stand and the Court of Appeals remanded the case back to the District Court who, in turn, has remanded the case back to the Board to reconsider the matter, applying the correct legal standard to the record established in the case, and then, to reach a decision, again, which may or may not be the same as when previously decided. It would, however, be a decision reached through application of the correct legal standard. It should be pointed out that depending upon the disposition of the case on remand, it could be subject to appeal once again.

Board counsel advised the Board that he will be submitting to the Board a memorandum discussing the upshot of the Court of Appeals' decision, and that this matter would be agendized for the next meeting for discussion of the procedural posture of this case.

The other item was a new case, Savage Services Corp., RNO 18-1937. Here, Board counsel had just received, two days prior to today's hearing, a motion for what Board counsel perceived was a motion to dismiss the case for the want of jurisdiction of the Board over this matter which entails a citation or citations concerning activity in connection with railroad cars. Board legal counsel advised, he would be sending the Board a memo concerning this matter, as well. It is a Reno case and is set for hearing on December 12 and 13, 2018. However, given the issues raised by the respondent's motion, it may be necessary to agendize this for discussion of the procedural posture of this matter at the next Board meeting, which is scheduled for Las Vegas on October 10 and 11, 2018.

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

Acting Chairman Weber called for this item to be heard. Dissatisfaction was expressed about the amenities of the current location for the conduct of hearings in Las Vegas. The Board members wanted to explore whether hearings could be held at the Business and Industry conference facilities located at 3360 West Sahara Avenue, in downtown Las Vegas. It was moved by Sandra Roche, seconded by James Halsey, that if a proper room could be secured at the Business and Industry offices to hold the next meeting of the Board on October 10, 2018, and October 11, 2018, at said offices, that the next meeting of the Board commence at 9:00 a.m., and that if the room or available space at the Business and Industry offices proves satisfactory, the Board shall relocate its meetings there in Las Vegas, to commence at 9:00 a.m. It was further moved that if facilities cannot be secured at the Business and Industry offices for the meeting of October 10, 2018, and October 11, 2018, the meeting of the Board will then be held for those dates at the current location at the Clark County Enterprise Library, 25 East Shelbourne Avenue, Las Vegas, Nevada, at 10:00 a.m., while efforts continue to relocate the Board meetings to a site suitable to the Board at the offices at Business and Industry or elsewhere. It was further moved that this is to be resolved in time to be able to properly notice the next meeting of the Board according to the OML, so that regardless of location, the meeting of the Board scheduled for October 10, 2018 and October 11, 2018, can be held. **The motion was adopted.**

Vote: 4-0.

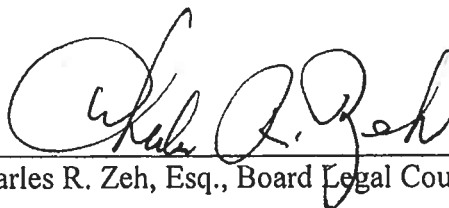
5. Public Comment.

Acting Chairman Weber called this item to be heard. There was no public comment.

6. Adjournment.

Acting Chairman Weber called this matter to be heard. It was moved by James Halsey, seconded by Frank Milligan, to adjourn the meeting. **Acting Chairman Weber then adjourned the meeting.**

Vote: 4-0.



Charles R. Zeh, Esq., Board Legal Counsel