

STATE OF NEVADA

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

March 13 and 14, 2019

Present

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

On March 13, 2019, 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 Department of Occupational Safety and Health, 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102. Participating in person were Rodd Weber, Sandra Roche, Frank Milligan and James Halsey. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him or her 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.

In the absence of Board Chairman Steve Ingersoll, Acting Chairman and Board Secretary, Rodd Weber, called the meeting of the State Occupational Health and Safety Review Board to order at approximately 9:03 a.m. Board members personally in attendance were Acting Chairman Weber and members Sandra Roche, Frank Milligan, and James Halsey. Chairman Ingersoll was absent from the meeting, this date.

Also in attendance was Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Salli Ortiz, Esq., Division of Industrial Relations (DIR) counsel for the complainant State of Nevada and Rusty Graf, Esq., counsel for Platinum Plastering, Inc., LV-18-1910, were personally in attendance as were other State staff and assorted observers from the public.

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.

As four Board members were present to participate in the meeting, including one on behalf of labor and one on behalf of management, a quorum was present.

Notice of the meeting was posted or published, electronically or otherwise, consistent with the requirements of the Nevada Open Meeting Law.

2. Public Comment.

There was no public comment.

3. Contested Case Hearings.

The Board Chairman advised that the following pending cases were withdrawn, because State OSHA informed the Board that these matters had settled and, thus, the hearings on the merits of the cases were vacated prior to the meeting, leaving only two cases to be heard on the contested docket for this date. The cases that purportedly have settled are as follows:

- 3.a: LV 18-1938, Clark County Water Reclamation;
- 3.b: LV 18-1950, Arizona Partsmaster;
- 3.d: LV 19-1967, Allied Building Materials, Inc. dba Cind-R-Lite Block Company;
and
- 3.f: LV 19-1956, Universal Protection Services, LP aka Allied Universal Security Services.

a. LV 18-1910, Platinum Plastering, Inc.

Acting Chairman Weber called this item to be heard. The State was represented by Salli Ortiz, Esq., and the respondent was represented by Rusty Graf, Esq., of Black & Lobello. Also, with him at the counsel's table was Jim Pope, owner and chief superintendent, Platinum Plastering, Inc. The parties presented their case or defense in chief, calling witnesses, offering exhibits into evidence and making closing argument. The hearing lasted about 5 hours, at the conclusion of which, the Board announced it would take the matter under consideration and advised the respondent that it would be informed of the decision when reached.

Acting Chairman Weber then called the next matter to be heard, Apex Linen Services, LV-19-1961. Sally Ortiz, Esq., appeared for the State and complainant. John Naylor, Esq., of Naylor & Braster, appeared for the respondent, Apex Linen Services. With him at counsel's table was Keith Marsh from Apex Linen. Attending also was Joe Dramise, the owner of Apex Linen.

The State commenced to present its case in chief. However, due to the lateness of the hour, the hearing was continued until tomorrow, during the presentation of the State's case in chief.

It was accordingly moved by Sandra Roche, seconded by Frank Milligan, to continue this matter until tomorrow, March 14, 2019 and, therefore, to adjourn the meeting. **Motion adopted.**

Vote: 4-0.

PROCEEDINGS OF MARCH 14, 2019

In the absence of Board Chairman Steve Ingersoll, Acting Chairman Weber continued to conduct the proceedings, reconvening the meeting on this date at 9:03 a.m. Roll was called. Those members present were Acting Chairman Weber, members Sandra Roche, James Halsey and Frank Milligan, as well as Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq. Other members of the public and OSHA staff were also present. Acting Chairman Weber called for the Apex Linen Service matter, LV-19-1961, to be reconvened and heard.

Salli Ortiz, Esq., appeared for the State and as before, John Naylor, Esq., of Naylor & Braster appeared for the respondent, Apex Linen Services. With him at the counsel's table was Keith Marsh, of Apex Linen. Attending also was Joe Dramise, the owner of Apex Linen.

The hearing was conducted. The parties called witnesses, offered exhibits into evidence and gave closing arguments, after which Acting Board Chairman Weber informed the parties that the Board would take the matter under advisement, deliberate and inform the parties of its decision once the Board decided the matter.

After a brief recess, the Board, with all four members still present, along with Board counsel, reconvened and took up in public deliberation on Apex Linen Services, LV 19-1961. Salli Ortiz, Esq., counsel for the State, remained present. After due deliberations, it was moved by Frank Milligan, seconded by Sandra Roche, to affirm Citation number 1, item 1, along with the characterization as serious and the fine of \$7,000. **Motion adopted.**

Vote: 4-0.

The Board then considered Citation 1, item 2. In that regard, it was moved after due deliberation, by Sandra Roche, seconded by Frank Milligan, to reject Citation 1, item 2 and to, therefore, in effect, acquit the employer of this charge. The vote was 2 in favor of the motion and 2 against the motion, with members Halsey and Weber voting no on the motion. The motion, therefore, failed on a vote of 2 in favor and 2 against, with one member, Chairman Ingersoll absent and, therefore, not voting.

A discussion then ensued about the meaning of a tie vote. Because the motion to acquit failed, the Citation 1, item 2, remained pending. The employer was not absolved of the pending Citation 1, item 2. However, the handwriting was on the wall, in that if a motion to affirm the citation was made, it, too, would fail on a vote of 2 in favor and 2 against the motion, as the roles of the respective Board members would be reversed in all likelihood. Accordingly, Board counsel was directed to report back to the Board the meaning or significance of the tie vote, or deadlocked Board, in other words, and the options available to the Board to complete the deliberations on this matter. This matter will be placed on the Agenda for continued deliberations during the next regularly schedule Board meeting which will be held in Las Vegas on April 10 and 11, 2019.

The Board next took up deliberations for Platinum Plastering, Inc., LV-18-1910. This matter involved the placement and use of A-frame scaffolding. The Board deliberated on this item, concluding that there was no doubt that the State had proved a *prima facie* case beginning with Citation 1, item 1. The problem the Board encountered for this case was that Citation 1, items 1, 2, 3 and 4 all seemed related and perhaps should have been just one citation. The Board enquired as to whether it had the freedom to, in effect, rewrite the Citation during the course of the hearing. Board legal counsel was skeptical of such a move, inasmuch as neither the State nor the employer respondent would have had notice of the nature of this amended approach to the case being considered by the Board, would have prepared to prosecute and defend on charges different than that contemplated by the Board and, thus, issues of due process or lack of notice may be created by a proposed rewrite of the charges during the course of the hearing. That may or may not be the case but it's something to be evaluated. Upon further deliberation, it was moved by Sandra Roche, seconded by Frank Milligan, to table this case until the next meeting and to direct Board legal counsel to advise the Board for this matter at the next meeting, of the Board's options, if any, for disposing of the case, given the Board's concerns. **The motion was adopted.**

Vote: 4-0.

The matter is continued, with the Board's counsel to report back to the Board its option(s), if any, in light of its concerns about the possible stacking of charges. This matter will also appear on the Board's Agenda for the meetings to be held in Las Vegas on April 10, and 11, 2019.

4. Administrative Meeting:

a. Approval of the previous Review Board minute of February 27, 2019.

Acting Chairman Weber next called this matter to be heard, the consideration of the minutes for the Review Board meeting of February 27, 2019. It was moved by Frank Milligan, seconded by Sandra Roche, to approve the minutes as written. **Motion adopted.**

Vote: 4-0.

b. Review Contested case settlements, motions, draft decisions, or procedural issues pending on status report, for approval and issuance of final orders:

Acting Chairman Weber next took up individually, the item under this heading.

i. RNO 19-1957, Tesla Motors NV, Inc.

Acting Chairman Weber called this matter next. It was moved by Frank Milligan, seconded by Sandra Roche, to approve the settlement. **Motion adopted.**

Vote: 4-0

ii. RNO 19-1966, Reliable Framing, Inc., dba RFI

Acting Chairman Weber called this matter next. Unlike the previous settlement approved by the Board, there was no information provided the Board in this case to justify the settlement of this matter. It was, therefore, moved by Sandra Roche, seconded by Rodd Weber, to table this matter until the April 10 and 11, 2019 meeting of the Board to give the parties the opportunity to provide the Board with information justifying settlement of this case or at least to provide enough information for the Board to make an informed decision as to the disposition and approval of this settlement. **Motion adopted.**

Vote: 4-0.

iii. LV 18-1935, Walker Speciality (draft decision).

Acting Chairman Weber called this matter next. It was moved by Sandra Roche, seconded by Rodd Weber, to approve the decision and authorized execution by the Acting Chairman Weber of the decision after correction of any clerical errors without further review of the Board. **Motion adopted.**

Vote: 4-0.

iv. RNO 18-1937, Savage Services Corp (draft decision).

Acting Chairman Weber called this matter next. It was moved by Sandra Roche, seconded by Rodd Weber, to approve the decision and authorized execution by the Acting Chairman Weber of the decision after correction of any clerical errors without further review of the Board. **Motion adopted.**

Vote: 4-0.

c. General administration and/or procedural issues.

i. General Matters of Import to Board Members:

There were no matters discussed.

ii. Old and New Business.

There was no old or new business discussed.

c. Schedule of Hearings and Pending Cases, Calendar and Status Report.

The next scheduled meeting is set for April 10 and 11, 2019, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

5. Public Comment.

Sally Ortiz, Esq., as a matter of public comment, exhorted the Board to disregard discussions about settlement or negotiations regarding the issuance of a citation, when considering matters before the Board.

6. Adjournment.

Acting Chairman Weber called this matter next. It was moved by James Halsey, second by Frank Milligan, to adjourn the meeting. **Motion adopted.**

Vote: 4-0.



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

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