

STATE OF NEVADA

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

August 21, 2019

**Steve Ingersoll (Labor)
Rodd Weber (Management)
James Halsey (Labor)
Frank Milligan (Public at Large)
Lance Semenko (Management)**

On August 21, 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 Chairman Steve Ingersoll and members James Halsey, Frank Milligan and Lance Semenko. Participating by telephone conference call was Board Secretary, Rodd Weber. In accordance with the Nevada Open Meeting Law, each Board member participating in the meeting either had before him 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.

Participating in person were Chairman Steve Ingersoll and members James Halsey, Frank Milligan and Lance Semenko. Participating by telephone conference call was Board Secretary, Rodd Weber. As all five members of the Board participated in the meeting including a representative of labor and a representative of management, a quorum was present to conduct the Board's business.

Also, personally in attendance were Board legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., Salli Ortiz, Esq., Division of Industrial Relations (DIR), and Jess Lankford, Chief Administrative Officer, NV OSHA.

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.

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

2. Public Comment.

Salli Ortiz, Esq., as a member of the public, advised that the January meeting of the Board in Las Vegas was scheduled, again, at the same time as one of the largest conventions for Las Vegas was scheduled to be held. The room rates are already at \$400 per night or more and consequently, the Board might want to consider moving either the date of the meeting in Las Vegas, or move the January meeting to Reno. The Board acknowledged the comment.

3. Contested Case Hearings.

Board counsel advised that there are no contested cases as all had been settled or rescheduled.

4. Administrative Meeting:

a. Approval of previous Review Board Minutes of July 10/11, 2019.

Chairman Ingersoll called this matter to be heard. Frank Milligan advised that on the Sandra Roche item, the minutes should have read “acknowledgment” and not resolution, recognizing her service to the State of Nevada. There were no other corrections, omissions or additions to the minutes and, therefore, it was moved by Frank Milligan, seconded by James Halsey, to approve the minutes as corrected. **Motion adopted.**

Vote: 4-0-1 (Member Semenko abstaining as he was not present for this meeting).

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

i. RNO 19-1981, Neeser Construction, LLC

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by Frank Milligan, seconded by James Halsey, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

ii. RNO 19-1958, Aramark Uniform and Career Apparel, LLC

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by Frank Milligan, seconded by James Halsey, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

iii. LV 19-1971, 9W Halo Western Opco LLC dba Angelica

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by James Halsey, seconded by Frank Milligan, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

iv. LV 19-1992, Michael Foods, Inc; Northern Star Co. dba Farm Fresh Foods

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by Frank Milligan, seconded by James Halsey, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

v. LV 19-1984, Orchard Mills, Inc.

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by James Halsey, seconded by Frank Milligan, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

vi. LV 18-1938, Clark County Water Reclamation Fatality

Chairman Ingersoll then called this item to be heard, a settled case. It was moved by James Halsey, seconded by Frank Milligan, to approve the disposition of this matter. **Motion adopted.**

Vote: 5-0.

vii. RNO 18-1946, DNA Framing, Inc., dba DNA Carpentry

Lastly, the Chairman called this matter to be heard, the consideration by the Board of the draft decision of the Board in DNA Framing, Inc., dba DNA Carpentry. The issue before the Board was whether the draft decision accurately restated the decision of the Board after the hearing. It was moved by James Halsey, seconded by Frank Milligan, to approve the decision as an accurate restatement of the Board's disposition of the matter. Member Semenکو abstained as he did not participate in the hearing of this case. **Motion adopted.**

Vote: 4-0-1 (Semenکو abstaining for the reason stated).

c. General administration and/or procedural issues.

Chairman Ingersoll then called this general administrative and procedural matter for consideration.

i. General Matters of Import to Board Members.

There were no matters discussed.

ii. Old and New Business.

Secretary Weber asked if Board counsel's contract should come under this heading. Chairman Ingersoll advised that this item was next to be heard. There was no other old or new business discussed.

iii. Board Counsel's contract renewal.

Chairman Ingersoll called for this item to be heard, the Board's legal counsel's contract. He asked for a report from Board counsel, who advised that he was currently negotiating with the State on a new contract, he had submitted a counter offer for a two-year contract, initially, he and the administrator had signed off on a two-year contract covering this Board and the other two Boards legal counsel represents, that the day before the matter was to go to the Board of Examiners, the contract was pulled, that the State then proposed a new contract for less than a year, which Board counsel rejected, the State then provided an interim contract through 12/31/19, but failed to provide adequate funding to cover the contract for that period, that the State was advising this Board and others that there was insufficient funding to carry on through December 31, 2019, and the Board might have to stop meeting. Board counsel advised, further, that the Board's dockets are booked solid through January 2020 and that it would be a disaster for the Board to have to stop meeting and as a consequence, Board counsel would continue to represent the Board even if unpaid, until the contract situation was resolved so that the Board could carry on its duty to the State.

It was, therefore, moved by James Halsey, seconded by Frank Milligan, to reaffirm that the Board had already retained present legal counsel for another two years at the proposed rate of \$230 per hour, an hourly rate already previously agreed upon by the State and for the State, pending completion of the negotiations on the new contract, to adequately fund Board counsel at the current rate of \$180 per hour, under his existing contract so that the Board can continue its service to the State. A copy of the motion is attached, hereto.

The Board also directed that Board counsel prepare a letter for the signature of the Chairman communicating to the State the position of the Board. **The motion was adopted.**

Vote: 5-0.

iv. Resolution regarding Sandra Roche acknowledging Sandra Roche's service to the Review Board and the State of Nevada.

The Board then took up the matter of Sandra Roche's tenure on the Board. Secretary Webb eloquently expressed the sentiment of the Board of Sandra Roche's great contribution to the Board and her service to the State as a hard working and diligent Board member. These sentiments were acknowledged by the remaining Board members and each wished her well in her future endeavors, wherever they might take her.

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

The Board took up the issue raised by Salli Ortiz, Esq., created by the convention elevating the price of a room for State employees to a prohibitive level. The Board decided to defer action until after the September meeting to see how many Reno cases are left unresolved after the September 11 and 12, 2019, Board meeting in Reno. If there are a lot, then, those cases can be held over until January 2020, and the Board meeting shifted to Reno in January 2020, and the Las Vegas cases already scheduled for January 2020, moved to a different date for hearing in Las Vegas. Meanwhile, the calendar is unchanged and the Board will continue hearing cases, the funding issues notwithstanding. The Board will remain in business, setting its own calendar as an independent tribunal.

The Board has scheduled the following meetings.

- * **September 11, 2019 and September 12, 2019**, at 4600 Kietzke Lane, Building F, Suite 153, Reno, Nevada 89509.
- * **October 9, 2019 and October 10, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.
- * **November 13, 2019 and November 14, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.
- * **December 11, 2019 and December 12, 2019**, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

5. Public Comment.

There was no public comment.

6. Adjournment.

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

Vote: 5-0.



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

... I move that the Nevada Occupational Safety and Health Review Board (Board) reaffirm that Mr. Charles R. Zeh has been and is retained to serve as its legal counsel pursuant to the specific statute, NRS 618.585, for a contract term of at least two years, at the hourly rate of \$230 per hour, plus costs, for attorney time, \$70 per hour for paralegal time, with Mr. Zeh to pay his own travel. This is to commence immediately, or at a mutually agreeable start date. The motion is based upon Mr. Zeh's extensive experience and effective speciality in the field of Occupational Safety and Health Law, as has been shown by his current representation of this Board.

Additionally, his administrative experience is shown by his legal counsel to the State of Nevada Subsequent Injury Boards, his Chairmanship of the Reno Planning Commission, his Chairmanship of the Reno Planning Commission of Washoe County, and his Chairmanship of other public service Boards. He has administrative experience as a counselor to Boards and as a Board member.

Pursuant to NAC 333.150, the foregoing qualifications meet the criteria for exception as well as designation of sole source contractor.

I further move that Mr. Zeh's current contract be adequately funded and maintained until the new contract is executed at the current rate of \$180 per hour plus travel and costs, so that the Board's caseload can be managed and cases decided without interruption in order to continue Review Board operations for the prompt hearing, adjudication, and processing of Board business to responsibly foster the statutory mandate under NRS Chapter 618 and avoid interruption of the appellate process.