

**STATE OF NEVADA**

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

**June 10, 2020  
Via teleconferencing**

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

On June 10, 2020, 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 as modified by Governor Sisolak's Emergency Directive 006, permitting meetings to be conducted by teleconferencing and providing for a refined publication process for posting and the publication of agendas or notices of the meeting. This meeting took place by teleconferencing. The hearing was recorded by a court reporter. Participating by telephone were Chairman Steve Ingersoll, Board Secretary Rodd Weber, and members James Halsey, Frank Milligan and Lance Semenko. 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.

Chairman Ingersoll called the meeting to order at 9 o'clock a.m., by telephonic conferencing.

**1. Roll Call.**

Participating by telephone were Chairman Steve Ingersoll, Board Secretary Rodd Weber and members James Halsey, Frank Milligan and Lance Semenko. As 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, participating by telephone were Salli Ortiz, Esq., counsel to the 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, Jeff Langford, Chief Administrator, Jimmy Andrews, Program Coordinator for State OSHA, Craig Murdy, Esq., Garrett Mendoza, Jeff Kent, Ray Milner, Sami Randolph, Esq., Rusty Graf., Esq., Mike Hoy, Esq., and Board of Review legal counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq.

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, as modified through the Governor's Emergency Directives. 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 as further modified by Emergency Directive 006 of the Governor.

**2. Public Comment.**

Chairman Ingersoll called this item to be heard. There was no public comment at the hearing. Board counsel advised, also, that he had received no written public comment as permitted in accordance with the notification of the meeting as set forth in the Agenda.

**3. Administrative Meeting:**

**a. Approval of Previous Review Board Minutes of December 11, 2019 and March 10, 11, 2020.**

December 11, 2019 minutes: Chairman Ingersoll and member Frank Milligan were absent from the meeting of December 11, 2019 and, therefore, abstained from voting on the motion to approve the minutes. It was moved by Lance Semenko, seconded by James Halsey, to approve the minutes of the December 11, 2019, as read. **Motion adopted.**

**Vote: 3-0-2 (Ingersoll and Milligan abstaining).**

March 10, 11, 2020 minutes: James Halsey and Frank Milligan were absent from all or portions of the meeting on March 10, 2020, and, therefore, abstained from voting on the motion considering the minutes for March 10 and 11, 2020. It was moved by Rodd Weber, seconded by Steve Ingersoll, to approve the minutes as read for March 10, 11, 2020. **Motion adopted.**

**Vote: 3-0-2 (Milligan and Halsey abstaining).**

**b. Review Contested Case Settlements, Motions, Draft Decisions, or Procedural Issues Pending on Status Report, for Approval and Issuance of Final Orders:**

**i. RNO 19-1959, Petersen-Dean, Inc.**

Craig Murdy and Garrett Mendoza appeared for the respondent, Peterson-Dean, Inc. Salli Ortiz, Esq., and Jeff Langford appeared for the State. It was moved by Rodd Weber, seconded by James Halsey, to approve the proposed settlement in this matter. **Motion adopted.**

**Vote: 5-0.**

**ii. LV 19-2000, Dri Tech Corporation.**

No one appeared on behalf of the respondent. Salli Ortiz, Esq., was present on behalf of the State. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the proposed disposition. **Motion adopted.**

**Vote: 5-0.**

**iii. LV 20-2022, M.J. Dean Construction, Inc.**

Jeff Kent and Ray Milner appeared on behalf of the respondent, M.J. Dean Construction, Inc. Salli Ortiz, Esq., was present on behalf of the State. It was moved by Rodd Weber, seconded by Lance Semenko, to approve the disposition of this matter. **Motion adopted.**

**Vote: 5-0.**

**iv. RNO 20-2030, Paiute Pipeline Company.**

No one appeared on behalf of the respondent. Salli Ortiz, Esq., was present on behalf of the State. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the disposition as proposed. **Motion adopted.**

**Vote: 5-0.**

**v. LV 20-2010, The Original Roofing Company.**

No one appeared on behalf of The Original Roofing Company. Salli Ortiz, Esq., was present on behalf of the State. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the disposition of this matter as proposed. **Motion adopted.**

**Vote: 5-0.**

**vi. LV 18-1939, Olson Precast Co., (Order Dismissing, in part, the Contest and Complaint).**

Sami Randolph, Esq., of Hooks Meng & Clement, appeared on behalf of Olson Precast. Salli Ortiz, Esq., appeared on behalf of the State. This matter is still before the Board of Review as Citation 1, Item 1 of the Complaint carrying a proposed fine of \$70,000, is still being contested. Board's counsel explained, however, that during the course of the hearing on this matter, the employer withdrew its contest of Citation 2, Item 1 through Citation 4, Item 1, a total of 13 citations. As a result of the withdrawal of the contest as to these 13 matters, the citations shall stand as approved and as affirmed, including a total of \$12,000 in fines. Citation 1, Item 1, however, remains a contested matter and, therefore, to be heard at a later date that has been scheduled at the mutual convenience of the parties and the Board. Ms. Randolph did not object to this characterization or recasting of the status of this matter. It was moved by Rodd Weber, seconded by Lance Semenko, to affirm this disposition of Citations 2, Item 1 through Citation 4, Item 1, but that Board counsel was directed to prepare an order more in keeping with the discussions before the Board on this date. **Motion adopted.**

**Vote: 5-0.**

**vii. RNO 19-1960, B&C Cabinets and Millwork, Inc. (Consider for Approval, Rejection or Modification of the Draft Decision of the Board).**

Michael Hoy, Esq., of Hoy, Chrissinger, Kimmel, Vallas, P.C., appeared on behalf of B&C Cabinets and Millwork, Inc. Salli Ortiz, Esq., was present on behalf of the State. Before the Board was a draft decision following the hearing and disposition of this case by the Board. The question before the Board was whether the draft decision was consistent with what the Board believed its disposition was concerning this case. When this case was first heard, members James Halsey, Sandra Roche, and Frank Milligan were the Board members that heard and decided the case. Sandra Roche is no longer a member of the Board. Chairman Steve Ingersoll, however, has read the transcript of the hearing, reviewed the pleadings and reviewed the exhibits offered into evidence in this matter. He is, therefore, eligible to consider whether the draft decision is consistent with the Board's determination in this matter. Secretary Rodd Weber was absent when this case was heard. Member Lance Semenko had not yet been appointed to the Board. With Chairman Ingersoll's review of the record, there is present a quorum to decide this issue. It was accordingly moved by James Halsey, seconded by Frank Milligan to approve the draft decision as the final decision of the Board and to authorize Chairman Ingersoll to sign the draft decision for the Board. **Motion adopted.**

**Vote: 3-0-2 (Weber and Semenko abstaining for the reasons stated).**

**viii. LV 18-1910, Platinum Plastering, Inc. (Consider for Approval, Rejection or Modification the Draft Decision of the Board).**

Rusty Graf, Esq., Black & Lobello, appeared on behalf of the employer. Salli Ortiz, Esq., was present on behalf of the complainant, State of Nevada. Board counsel explained, again, that the issue before the Board was whether the draft decision was consistent, in the Board's opinion, with the Board's handling of this matter. There were four citations associated with this matter. Citation 1, Item 1 through Citation 1, Item 4. Citation 1, Item 1 was based upon 29 CFR 1926.451(b)(1). The Board concluded that 29 CFR 1926.451(b)(1) is not, standing alone, a regulation which can be violated. It is a violation if one or more subparts (2) through (11) are violated. Subsection 451(b)(i), standing alone contains, itself, no condition, rule, or standard that could be violated. The Board, therefore, upon the advice of Board counsel, dismissed Citation 1, Item 1 as it is not a regulation that could, itself, be violated. Citation 1, Items 2 through 4 were sustained by the Board. Citation 1, Item 2 is based upon 29 CFR 1926.451(b)(1)(i) which addressed spacing requirements requiring planking on a scaffolding to be placed at no greater intervals than 1 inch (2.5 cm). Citation 1, Item 3 was based upon 29 CFR 1926.451(b)(7), which required planking for extensions to be placed over structures or bearers (the frame of the scaffolding). Citation 1, Item 4 was based upon 29 CFR 1926.451(f)(3), which requires that scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift and after any occurrence which would effect the scaffold's integrity.

The Board found for the State and affirmed each of these three citations. The decision reflects this disposition. No penalty, however, was proposed for Citation 1, Items 2 through 4.

With that explanation, it was moved by Rodd Weber, seconded by James Halsey, to approve the draft decision in the Platinum Plastering matter as the decision of the Board. In this case, Rodd Weber, acting Chairperson, Frank Milligan, and James Halsey were present and participated in disposition of the case. They are in attendance and eligible to vote on whether to affirm the draft decision prepared for the Board. Chairman Ingersoll was absent for the hearing on this case. Member Lance Semenko was not then appointed to the Board. They advised they would abstain for this matter.

It was moved by Rodd Weber, seconded James Halsey, to approve the draft decision as the decision of the Board. **Motion adopted.**

**Vote: 3-0-2 (Ingersoll and Semenko abstaining).**

**ix. LV 19-1961, Apex Linen Service, Inc. (Consider for Approval, Rejection or Modification the Draft Decision of the Board).**

When this matter was called, Board counsel advised that this matter has been tabled and the decision will appear on the agenda for the August 2020 Board meeting.

**c. General Administration and/or Procedural Issues.**

**i. General Matters of Import to Board Members.**

Rodd Weber wanted to know whether he would have to reapply when his current term of 4 years expires. He also wondered whether this requirement had been suspended by the Governor pending the COVID-19 pandemic. Board counsel advised, as did Board Chairperson, Steve Ingersoll, that as a Board member's term expires, the Board member must reapply in order to remain on the Board. As for the remaining question, Board counsel will review the Governor's executive orders to determine if reapplication has been suspended. There were no other general matters of import to the Board members discussed.

**ii. Old and New Business.**

Board counsel pointed out that the meeting for July is currently scheduled for the three days of hearings, beginning on July 7, 2020, and continuing through July 9, 2020. A review of the matters scheduled to be heard reveals that it is unlikely three days of hearings will be necessary, assuming contested matters can be heard as of July. Board counsel recommended deleting July 7 or July 9 as one of the three days being scheduled should prove to be unnecessary, assuming that the contested matters can be heard. Board counsel pointed out, further, that even if the contested matters cannot be heard, there will be administrative matters for consideration and, therefore, there will be a meeting of some type for the Board in July 2020.

**iii. Conduct of Contested Case Hearings.**

The Board discussed the efficacy of using teleconferencing to hear contested cases. The Board's clear, general consensus was that while administrative hearings, such as that conducted today,

could satisfactorily be done by teleconferencing, an actual, contested case could not or would not successfully be conducted by teleconferencing. There remained the question, however, of whether in July 2020, contested hearings could be heard or whether teleconferencing would have to be a continued method for transacting business.

The Board members made clear, they did not see how a contested case could be heard other than with the Board and parties personally present for a host of reasons. Salli Ortiz also stated, she did believe contested cases must be heard with the parties and Board personally present.

Jeff Langford, Chief, explained that there were other issues surrounding this, including the ban on travel due to the COVID-19 pandemic. If a contested case were to be heard in July 2020, some travel to Reno would inevitably be involved. So, travel may be problematic and make hearings in person academic and moot. Jeff Langford suggested a meeting between the Board or representatives of the Board and DIR staff to include possibly Mr. Langford, Ms. Ortiz and Donald C. Smith, Esq., counsel to the DIR, to ascertain whether and to what extent contested cases may be heard and if so, under what circumstances. Board counsel advised that any meeting that would involve the entire Board would be subject to the Nevada Open Meeting Law.

The Board generally agreed a meeting, as discussed, might be a good idea, and so Mr. Langford advised that Jimmy Andrews, Program Coordinator for State OSHA, would attempt to arrange such a meeting that would involve the Chairman of the Board, the Secretary of the Board and Board Counsel to meet with whomever the State, Division of Industrial Relations might bring to the meeting. The notion was this meeting be held sooner rather than later in order to gather this information to be able to report back to the Board for the July 8 and July 9, 2020 meeting of the Board in Reno, NV.

This concluded the discussion under this item 3(c)(iii).

**d. Schedule of Hearings on Pending Cases, Calendar and Status Report.**

It was moved by Rodd Weber, seconded by Frank Milligan to delete the meeting of July 7, 2020, in Reno and conduct the meeting as originally calendared on July 8 and 9, 2020, if necessary. Again, Board counsel advised that even if the contested cases cannot be heard, there are administrative matters to be heard and so, therefore, a meeting in July of the Board will be conducted. **Motion adopted.**

**Vote: 5-0.**

The Board has scheduled the following meetings:

- \* **July 8 and 9, 2020** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada. [subject to being teleconferenced, only administratively]
- \* **August 5 and 6, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.
- \* **September 9, 10 and 11, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102.

- \* **October 14 and 15, 2020** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- \* **November 12 and 13, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102..
- \* **December 9 and 10, 2020** - 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada 89102..
- \* **January 13 and 14, 2021** - 4600 Kietzke Lane, Building G, Suite 160, Reno, Nevada.
- \* **February 10 and 11, 2021** - *Location to be determined.*
- \* **March 10 and 11, 2021** - *Location to be determined.*

**4. Public Comment.**

There was no public comment.

**5. Adjournment.**

It was moved by James Halsey, seconded by Rodd Weber, to adjourn the meeting. **Motion adopted.**

**Vote: 5-0.**

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

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