

STATE OF NEVADA
Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, Nevada

March 5, 2021
Via teleconferencing and audio conferencing (WebEx)

Steve Ingersoll (Labor)
Rodd Weber (Management)
Frank Milligan (Public at Large)

On March 5, 2021, 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 Audio conferencing (WebEx) 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. 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.

The meeting was called to order by Board Chairman Steve Ingersoll at approximately 8:00 a.m., on February 10, 2021.

1. Roll Call.

Board members participating and present by virtual hearing were Chairman Steve Ingersoll, Secretary Rodd Weber and Board Member Frank Milligan. There was a quorum present as one member of the Board representing labor and one member of the Board representing management was present and participating in the meeting. A quorum of the Board, consisting of three members, was present.

Also attending by virtual hearing was Board Counsel Charles R. Zeh, Esq., the Law Offices of Charles R. Zeh, Esq. Joining the meeting later was Salli Ortiz, Esq., attorney for the State of Nevada OSHA. Victoria Carreon was also in attendance at various times during the meeting as was Tristan Dressler.

The hearing on this date was reported by Court Reporter Kelly Jackson.

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 Sisolak'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 the Governor's Emergency Directives 006.

2. Public Comment

Chairman Ingersoll called this matter to be heard. There was no public comment from those participating over the internet. Board counsel advised that no written public comment had been received prior to the meeting.

3. Contested Hearings.

Chairman Ingersoll called this matter to be heard. Board Counsel advised that the Westcor matter was vacated and continued to be reset at a later date because of an eleventh hour motion to vacate. The motion to vacate was made by counsel for Westcor and was unopposed by the State. The motion was based upon a concern by Westcor of prejudice because several Westcor employees were being investigated for embezzlement from Westcor including, at least, one-key witness that would be heard as a part of this matter. Chairman Ingersoll granted the motion and in his Order, required the parties to cooperate to reschedule the matter at their earliest convenience under the circumstances.

As Westcor was the only contested matter scheduled to be heard on this date, this concluded the Contested Hearing portion of the meeting of the Board on March 5, 2021.

4. Administrative Meeting:

Chairman Ingersoll called the Administrative portion of the meeting to be heard, beginning with Item(a), consideration of the Review Board minutes for the meeting of February 10, 2021. It was moved by Rodd Weber, seconded by Frank Milligan, to approve the minutes as read. **Motion adopted.**

Vote: 3-0

- (b) General administration and/or procedural issues.
 - (i) General matters of import to Board members.

Board counsel advised the Board and all those present that William Spielberg of Las Vegas of the IBEW had been appointed by Governor Sisolak to replace James Halsey as a Labor representative member of the Board. Mr. Spielberg had not yet completed the application process before becoming a Board member and was, therefore, not in attendance on this date. Once his oath of office has been executed, he will become a Board member and should be available for participation during the Board meeting of April 14 and 15, 2021. There were no other general matters of import discussed by the Board.

(ii) Old and New Business.

There was no discussion of this item.

(iii) Conduct of contested cases hearings.

Chairman Ingersoll asked whether Ms. Carreon of the Division of Industrial Relations was still present and participating in the meeting. If so, he wanted to know from her when the State might consider allowing the conduct of hearing on an in-person basis, instead of using teleconferencing or videoconferencing to hear the cases. She advised that the Governor is monitoring the vaccination rate for the COVID 19 virus and once the vaccination rate reaches an acceptable/safe level it was believed that at that time Governor Sisolak will open up the State of Nevada buildings and allow staff to travel and participate in meetings with other persons present. It is anticipated that this will not occur after the month of April but it may occur during the month of May 2021. Meanwhile the Board meeting for April 14 and 15, 2021, will in all likelihood be conducted by video teleconferencing. Board Counsel advised that a Notice will go out to those on the Docket for April 14/15, 2021, that the hearings on those dates will be conducted by teleconferencing.

(iv) Board Counsel's Contract.

Chairman Ingersoll called this matter to be heard. He immediately moved to retain current Board Counsel at the conclusion of the existing contract, for an additional two years and to perform for the Board the same services as presently being provided. After a brief discussion, the motion was seconded by Frank Milligan and Rodd Weber. The question was called and the Motion was Adopted.

Vote: 3-0.

(c) Schedule of hearings on pending cases, calendar and status report.

Board Members checked their calendars for the meetings to be held on April 14 and 15, 2021. Board secretary Rodd Weber noted that he had a conflict but would endeavor to work around it. The calendars for Board Chairman Ingersoll and Member Frank Milligan were clear on that date. It appears that the Board will be able to go forward with hearings on April 14 and 15, 2021.

There was no further discussion regarding the schedule of the hearings of pending cases.

5. Public Comment.

Chairman Ingersoll called again for Public Comment. Victoria Carreon, Director of the DIR, advised that she heard the action taken with respect to the Board's Legal Counsel but informed the Board that the State would take it under consideration as the State decides who will be representing the Board. Chairman Ingersoll then made clear that as has occurred in the past, the Board will make its own decision as to its choice of its attorney and that the choice of Mr. Zeh has already been made on this date. Chairman Ingersoll acknowledged that the contract is ultimately approved by the Board of Examiners but the choice of Legal Counsel on the contract

remains the decision of the Board. Both Frank Milligan and Rodd Weber stated that they agreed with Chairman Ingersoll, that the choice of Board Counsel remains a decision of the Board and no one else. Ms. Carreon stated she would look at the statute to see what it says about the selection of the Board Counsel. That concluded the discussion on this item.

Secretary Weber then stated that he was a little disappointed that there was not a back up case scheduled to be heard on this date in the event that something happened with Westcor and wondered if in the future this could be avoided by scheduling back-up cases in case a matter scheduled to be heard goes off calendar. Board counsel advised that is how it is handled. In fact, for the rest of the scheduling appearing on the Agenda, there are seven to cases to be heard for each session of the Board. The parties to the contested cases are advised whether they are a first, second, third, set, etc., to be heard. If, and in the event, a matter settles or goes off calendar, the remaining cases on the docket are advised of their new docket status number as they move up on the list as a case or cases fall off the calendar. March 5, 2021 was the unfortunate situation of a special meeting on short notice. Only Westcor was able to be ready to be heard on this date. It was also anticipated that Westcor would take all day to be heard, given the number of witnesses projected to be called and heard.

This concluded the discussion of items under Public Comment.

6. Adjournment.

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

Vote: 3-0.


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

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