

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

October 13, 2021
Via teleconferencing and audio conferencing (WebEx)

Rodd Weber (Management)
Frank Milligan (Public at Large)
William Spielberg (Labor)
Jorge Macias (Management)
Scott Fullerton (Labor)

On October 13, 2021, a meeting of the Nevada Occupational Safety and Health Review Board was convened.

The Board elected to exercise its option under AB 253 in light of the COVID-19 pandemic to conduct the meeting of the Board exclusively by use of a remote technology system. There was no physical site available for the conduct of this meeting. The public was advised that the Complainant, Respondents, Witnesses, Attorneys, Board members, and legal counsel and any other participants in the meeting would be participating by electronic means.

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 Weber called the meeting to order at approximately 9:00 am on October 13, 2021.

1. Roll Call.

Those present at the meeting were Chairman Rodd Weber, Vice-Chairman William Spielberg, and Members Frank Milligan, Jorge Macias and Scott Fullerton. As five members participated including representatives of labor and management, a duly constituted quorum was present to conduct the business of the Board. Also present was Board counsel Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., and Salli Ortiz, Esq., counsel to the State of Nevada OSHA.

The meeting of the Board was conducted by video conferencing. The public had the option of participating also by telephone. The hearing on this date was reported by Court Reporter Kathy Jackson, who appeared virtually.

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 or amended through Governor Sisolak's Emergency Directives and AB 253. 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 amended by AB 253.

2. Public Comment.

There was no public comment over the internet or during the outset of the hearing. Also Board Legal Counsel advised that there was no public comment received in writing at Board Counsel's office in advance of the hearing.

3. Contested Case Hearings.

(a) LV 21-2102, Tarkanian Basketball Academy (Continued Hearing)

Chairman Weber called this item to be heard, the first item on this date on the Board's stacked calendar, LV 21-2102, Tarkanian Basketball Academy. Board Chairman Weber asked Board Counsel to set this case. Board Counsel advised that the hearing this date was a continuation of the hearing initiated in this matter. The State was represented by Sally Ortiz, Esq., and Tarkanian Basketball Academy was represented by Danny Tarkanian.

The State offered a supplemental evidence packet for admission into evidence, consisting of Exhibit 4, pages 128-143 and Exhibit 5, pages 144-154. Mr. Tarkanian did not object to the admission of Exhibit 4, into evidence. He objected to the admission of Exhibit 5 into evidence on relevance grounds. Board Chairman Weber accepted Exhibit 4 and admitted it into evidence. Board Chairman Weber sustained the objection to Exhibit 5. It was not admitted into evidence. Mr. Tarkanian advised the Board that he had no additional exhibits to offer into evidence.

The parties proceeded with the hearing on the merits. The State called one witness, Pepsi Porciuncula, who was interrogated by counsel for the State and Counsel for Tarkanian Basketball Academy. Mr. Porciuncula is the General Manager for Tarkanian Basketball Academy, Inc.'s facilities in Las Vegas. At the conclusion of his testimony, the State rested. Mr. Tarkanian then put on his case, in defense, calling Rodney Sargent to the stand. He was questioned by both counsel for the State and Mr. Tarkanian. Mr. Tarkanian advised the Board of Reviews that Tarkanian Basketball Academy, Inc., was no longer contesting Citation 2, Item 1A, 1B, and 1C, and in effect confessed judgment on Citation 2.

The parties then presented their closing arguments. The Board took the matter under advisement and commenced deliberations. Believing that the State had failed to satisfy its burden of proof in this matter, a claim made under the general duty clause for Citation 1, Item 1, it was moved by Frank Milligan, seconded by Jorge Macias, to vacate the claim on Citation 1 item 1. The motion was approved.

Vote: 5 - 0

Then with respect to Citation 2, Item 1 A, B and C, it was moved by Scott Fullerton, seconded by Frank Milligan, to accept in its entirety the stipulation by Tarkanian Basketball Academy Inc., to confess judgment on these three items. Citation 2, item 1A carried within a fine of \$292 when the size of the workforce and the lack of a history between Tarkanian Basketball Academy, Inc., and OSHA, were taken into account. The motion was adopted.

Vote: 5 - 0.

(c) LV 21-2187, 300 West Sahara, LLC dba Ahern Hotel aka Ahern Hotel and Convention Center.

Chairman Weber called this item next to be heard. The State was represented by Sallie Ortiz, Esq. 300 West Sahara, LLC, was represented by Perry Poff, Esq. Board Chairman Weber asked Board Counsel to set this case for hearing. Board counsel advised that the matter was before the Board upon the motion of 300 West Sahara to change venue by reason of and an objection to having the hearing conducted virtually rather than in person. The matter before the Board was briefed by both parties with the briefing cycle completed. The parties were to be given 15 minutes for each side of oral argument. Mr. Poff elected to reserve 5 minutes of his 15 for rebuttal. Counsel for both parties argued their position. At the conclusion of their oral argument, both were given the opportunity to rebut once again the argument of opposing Counsel. After exhausting both sides with their argument in support of and/or opposition to the motion, the Board took the matter under advisement and adjourned for lunch at approximately 12:30 returning at 1:30.

Upon returning from lunch, the Board deliberated and determined that the motion to change venue should be denied. It was accordingly moved by William Spielberg, seconded by Scott Fullerton, to deny the motion to change venue. Mr. Spielberg's motion was approved. The motion to change venue was denied.

Vote: 5-0.

3(i) LV 21-2076, Nazsteez LLC dba Rock's 76

Chairman Weber called this matter next for hearing. Ms. Ortiz represented the State and the Respondent was represented by Timothy Treffinger, Esq. Also present was the owner of the company Johneric Rock. Chairman Weber asked Board Counsel to set the case. Board Counsel set the case for hearing and began the process of admitting Exhibits in to evidence on behalf of each party.

Ms. Ortiz advised that her office had never received a copy of the Respondent's proposed exhibits. The hearing was adjourned, briefly, to give the Respondent time to submit to the State its proposed exhibits. While the recess was taken, apparently the parties met and conferred, where upon Ms Ortiz advised the Board that the case may be removed from the stacked docket at this time because the parties settled the matter.

The matter was, therefore, immediately removed from the calendar, pending receipt by the Board of proof and an explanation of settlement.

This concluded the contested portion of the agenda for this day as the remaining cases on the stacked docket were either settled, withdrawn, or otherwise continued.

4. Administrative Meeting.

Chairman Weber then called this item to be heard, the Administrative portion of the Agenda starting with Item 4(a).

(a) Approval of the previous Review Board Minutes of September 8 and 9, 2021.

It was moved by Frank Milligan, seconded by Jorge Macias, to approve the minutes for September 8 and 9, 2021. Motion adopted.

Vote: 5-0

(b) Review Contested Case Settlements, Motions, Draft Decisions, or Procedural Issues Pending on Status REp0rt, for Approval and Issuance of Final Orders.

Items i and ii, were pulled from the Agenda because the papers explaining the disposition of i and ii had not been completed.

(c) General administration and/or procedural issues.

Chairman Weber then called this item to be heard.

- i. General matters of import to Board members.

None were presented.

- ii. Old and New Business.

There was no old or new business discussed.

- iii. Post Pandemic, whether hearings may continue to be conducted remotely and if so, under what circumstances.

The Board elected to hold the November 9 and 10, 2021, meeting of the Board in Reno, Nevada, on a virtual basis, as opposed to an in-person hearing, after hearing from Victoria Carreon that the Board would be under constraints to wear a mask in light of the Covid-19 virus status in Washoe County. Orders will be going out to the parties on the stacked docket for November 9 and 10, 2021, advising that the hearings on those two dates would be conducted in Reno on a virtual hearing basis.

As for the rest of the dates for hearing beginning December 8 and 9, 2021 through April 13 and 14, 2022, no action was taken on whether to hold the hearings on a virtual basis. The remaining dates were too remote in time to make an informed decision.

5. Pubic Comment.

Chairman Weber called this item to be heard. There was no pubic comment offered at this time. No hands were raised over the internet to make public comment. Board counsel advised that no public comment had been received by his office through out this date.

6. Adjournment.

It was moved by Frank Milligan, seconded by William Spielberg, to adjourn the meeting. Motion adopted.

Vote: 5-0



Charles R. Zeh
/s/Charles R. Zeh, Esq.

Charles R. Zeh, Esq., Board Legal Counsel