

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

November 9, 2021
Via teleconferencing and audio conferencing (WebEx)

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

On November 9, 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.

Acting Chairman William Spielberg called the meeting to order at approximately 9:00 a.m., on November 9, 2021, and called Item 1, Roll Call.

1. Roll Call.

Those present at the meeting were Acting Chairman Spielberg, and Members Frank Milligan, Jorge Macias and Scott Fullerton. Chairman Rodd Weber was absent. As four 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 for 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.

Acting Chairman Spielberg called this item to be heard. No one participating in the meeting at this stage of the proceedings offered any public comment and Board Legal Counsel advised that his office had received no written public comment as of the commencement of the meeting.

3. Contested Case Hearings.

Acting Chairman Spielberg called this item to be heard, commencing with the case of the Chief Administrator Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations of the Department of Business and Industry, State of Nevada, Complainant, vs. DNA Framing, Inc. dba DNA Carpentry, Respondent. Docket No. RNO 21-2101. Appearing on behalf of the State of Nevada was Salli Ortiz, Esq., and appearing on behalf of DNA Framing, Inc., was Charles B. Woodman, Esq.

At the outset of the hearing, the State offered its Evidence Packet, consisting of pages 1 through 76, Exhibits 1 and 2. Mr. Woodman had no objection to the admission of the State's evidence packet pages 1 through 76 for admission into evidence and the Evidence Packet was admitted without objection.

The Respondent offered as its exhibits the exhibit packet commencing with DNA00001 and running through DNA00107. The State objected to the admissibility of exhibits DNA00063 through DNA00107, but had no objection to exhibits DNA00001 through DNA00062. The ruling on pages DNA00063 through DNA00107 was deferred until those pages became an issue during the course of the hearing. When that occurred, the State continued its objections to the admissibility of pages DNA00063 through DNA00107. Respondent pressed for their admissibility. The Acting Chairman ruled that exhibit pages DNA00063 through DNA00107 were irrelevant and the State's objection to admissibility was sustained, leaving exhibit pages DNA00001 through DNA00062 admitted into evidence without objection.

Both sides called witnesses and crossed examined the other party's witnesses. The hearing was concluded with closing argument, at which time the Board took up deliberations, at the conclusion of which it was moved by Scott Fullerton, seconded by Frank Milligan, to uphold the State's Complaint in its entirety, including the payment of the penalty in the amount of \$34,700. **The motion was adopted.**

Vote: 4-0.

As the proceedings took the entire day, the remaining portion of the Agenda for this date was continued to the next day. Then, the State Roofing Systems, Inc., Docket No. RNO 20-2023 case will be heard commencing at 9:00 a.m. When it became apparent that the DNA Framing case would consume the entirety of the day, State Roofing Systems was advised it would be excused and to reappear the following day, to commence the hearing on this matter, at 9:00 o'clock a.m.

5. Public Comment.

Acting Chairman Spielberg called this item to be heard. No public comment was offered and Board Counsel advised that no written public comment had been received by his office during the course of the meeting.

6. Adjournment.

Acting Chairman Spielberg called this item to be heard. It was moved by Jorge Macias, seconded by Frank Milligan, to adjourn the meeting. **The motion was adopted.**

Vote: 4-0.

STATE OF NEVADA
Minutes for the
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Las Vegas, Nevada

November 10, 2021
Via teleconferencing and audio conferencing (WebEx)

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

Continuation of the November 2021 meeting of the Review Board.

1. Roll Call.

Acting Chairman William Spielberg called the meeting to order at approximately 9:00 o'clock a.m. on this date. The Board members present were Acting Chairman William Spielberg and Members Frank Milligan, Jorge Macias and Scott Fullerton. Board Chairman Rodd Weber was unavailable to attend the meeting.

Also present were Board Counsel Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., and Salli Ortiz, Esq., Counsel for State OSHA.

2. Public Comment.

Acting Chairman Spielberg called this matter to be heard. There was no public comment. Board Counsel advised that his office had not received any written public comment prior to the commencement of the meeting.

3. Contested Case Hearings.

Acting Chairman Spielberg called this matter to be heard. The last remaining case for disposition on the Board's stacked docket was State Roofing System, Inc., Docket No. RNO 20-2023.

At the outset of the hearing, the State offered for admission into evidence Exhibit 1, pages 1-57 and Exhibit 2, pages 58-90. They were admitted without objection. Respondent offered for admission into evidence an Exhibit, page 1-121, Exhibit A-H. Exhibit A-G were admitted without objection. Exhibit H, pages 114-121 was not admitted into evidence.

Appearing on behalf of the Complainant, State of Nevada, was Salli Ortiz, Esq. Appearing on behalf of the Respondent, was Melissa K. Peters, Esq. and Eric Compere, Esq., Littler Mendelson, P.C. Each party called two witnesses to testify and be crossed examined. At

the conclusion of the evidentiary hearing, both sides presented their closing arguments.

During the course of the hearing, Ms. Ortiz on behalf of the State advised that the State was withdrawing Citation 2, Item 1. They would no longer be pursuing relief under that Citation. The Board then took the matter under deliberation.

At the conclusion of the oral argument it was moved by Frank Milligan, seconded by Scott Fullerton, to uphold the State's Citation 1, Item 1, in its entirety including payment of \$1,800, in assessments for Citation 1, Item 1, and to accept the State's withdrawal of Citation 2, Item 1. **Motion adopted.**

Vote: 4-0.

4. Administrative Meeting.

(a) Approval of the previous Review Board Minutes of October 13, 2021.

Acting Chairman Spielberg called this item to be heard. It was moved by Jorge Macias, seconded by Frank Milligan, to approve the minutes as read. **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.

Board Counsel advised that this item would be continued for approval and issuance of Final Orders during the next meeting of the Board.

(c) General administration and/or procedural issues.

Acting Chairman Spielberg called item to be heard.

i. General matters of import to Board members.

There was no discussion.

ii. Old and New Business.

There was nothing to be discussed.

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

Board Counsel advised that he would ascertain the mask and COVID-19 status situation in Clark County for the December 8 and 9, 2021 meeting of the Board. He will present that

information to Board Chairman Rodd Weber and have a determination made as soon as possible thereafter, whether the hearing for December 8 and 9, 2021 will be conducted on a virtual basis or will be heard on an in-person basis. The Board Chairman will then decide whether the meeting will be conducted virtually or in-person.

(d) Schedule of hearing on pending cases, calendar and status report.

There were no changes at this time in the calendar for scheduled hearings before the Board through March 9 and 10, 2022. However, Salli Ortiz, Esq., advised that she will request the Board meeting of February 9 and 10, 2022, be moved because of a conflict she has in her schedule. Board Counsel will confer with Board Counsel Weber and a determination will be made concerning the scheduled hearings of February 9 and 10, 2022, for the next Board meeting.

5. Pubic Comment.

Acting Chairman Spielberg called this item to be heard. There was no additional pubic comment offered at the Board meeting itself and Board Counsel advised that during the hearing no public comment was received by his office on behalf of the Board.

6. Adjournment.

It was moved by Frank Milligan, seconded by Scott Fullerton, to adjourn the meeting.
Motion adopted.

Vote: 4-0

Each Board member, Ms. Ortiz and Board Counsel, Mr. Zeh wished each other a Happy Thanksgiving and Veteran's Day holiday.



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

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