

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

September 11, 2024

Jorge Macias (Management)
Scott Fullerton (Labor)
Tyson Hollis (Public)
Gled Bautista (Management)

The meeting of the State of Nevada Occupational Safety and Health Review Board was called to order by Chairman Jorge Macias on September 11, 2024 at 9:03 a.m. The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada, 89102. The Board convened at the Division of Industrial Relations offices located at 3360 West Sahara Avenue, Suite 175, Las Vegas, Nevada, 89102. 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.

Board members present at the meeting were Board Chairman Jorge Macias Board members Scott Fullerton, Tyson Hollis and Gled Bautista. Frank Milligan was absent. As four members of the Board were present for the meeting, including one member representing labor, one member representing the public at large and two members representing management, a quorum was present for all matters for the Board to conduct its business on this date.

Also present 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 and Charles R. Zeh, Esq., the law offices of The Law Offices of Charles R. Zeh, Esq., Legal Counsel to the Board.

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 as amended by AB 253.

Notice was posted at the following locations:

The Law Offices of Charles R. Zeh, Esq.
50 West Liberty Street, Suite 950
Reno, Nevada 89501

Division of Industrial Relations
3360 West Sahara Ave., Suite 175
Las Vegas, NV 89102

This Notice was also timely posted at the following website addresses:

State of Nevada, Department of Business and Industry, Industrial Relations (DIR)
website at <https://dir.nv.gov/Meetings/Meetings>

Nevada Public Notices at <https://notice.nv.gov>

2. Public Comment.

Jack Paripovich, a lay person representative of Complete Demo Services, stated that inasmuch as this matter was being continued, again, he wanted to make sure that he was not missing the 30 day time frame to file his Notice of Appeal in this case. There was no other public comment either received by Board Counsel or by the Board during the course of the hearing.

3. Contested Case Hearings.

Board Chairman called item 3 to be heard, Contested Case Hearings.

a. Brief discussion of transcription process.

Board Counsel reminded the Board that the proceedings are being video taped with a transcript secured from the video tapping of the hearing or proceedings before the Board. There is no Court Reporter present to remind the parties not to speak when other people are also speaking so we do not have two people talking at the same time. Also, Board Counsel reminded the Board member to speak clearly and loud enough so that we do not have a bunch of in-audible indications in the transcript. We do not have a Court Reporter present to be able to be available to remind people to speak up so that they can be heard. Similarly we do not have a Court Reporter present to stop two people from talking at the same time in order to have a transcript that is not garbled. The transcript is the record of the proceeding and, therefore, must be handled with sensitivity in order to preserve the complete record of the cases before the Board.

Board Counsel then advised the Board further that RNO 25-XXXX, Pro-1 Automotive, Inc. dba Pro 1 Automotive, had been continued so this matter will not be heard this date.

The Chairman then called item 3.b. to be heard, RNO 23-2194, Q&D Construction, LLC, Oral Argument regarding the second request to conduct discovery, made in the form of a motion

to take deposition. Board Counsel explained that each side, the Respondent, Q&D and the Complainant, the State of Nevada, would be given 30 minutes to explain their position regarding the Q&D motion to conduct discovery by way of deposition. Then, when both parties had made their presentation, Q&D would be given 10 minutes to reply. Then Complainant was represented by Salli Ortiz, Esq. The Respondent and movant, Q&D Construction was represented by Lisa Wiltshire Alstead, Esq. She went first and explained that she wanted to depose the two CSHO's for this matter. They had conducted the soil testing in order to determine the safety of working in the trench on this construction project. Q&D claims that the record produced by the State did not include any of the testing results or testing protocol and Q&D wanted to depose the CSHO's, Garcia and Hernandez, to determine from them what went into their assessment of the safety of the employment environment when working in the trench. Q&D has employed experts to evaluate the security measures taken by Q&D to allow employees to work in the trench. According to the State, there was no such record of the assessment of the security situation while working in the trench and, therefore, Q&D need not take the depositions because they could point out that Q&D did not take appropriate steps to assess the security conditions in the trench. This is the only reason that Q&D wishes to depose Garcia and Hernandez from the State.

NAC 618.680, "Scope," states that in the absence of specific provisions otherwise, all discovery practice and procedure before the Board are in accordance with the Nevada Rules of Civil Procedure. Nevada Rules of Civil Procedure in turn, allow for the taking of depositions, as a matter of course. NAC 618.797, however, allows that except by special order of the Board, discovery depositions of parties, interveners or witnesses are not allowed.

The question before the Board is whether Ms. Alstead, on behalf of Q&D, could make a showing of special circumstances that would justify a special order allowing for depositions to be taken. Given the importance of soil testing in order to determine the safety of employment in the trench, the Board concluded that special circumstances existed to justify a brief deposition of Hernandez and Garcia. Accordingly, it was moved by Chairman Macias, seconded by Scott Fullerton to allow depositions to be taken of Garcia and Hernandez. The depositions may last two hours each for the depositions to be taken. If subpoenas were necessary to take a disposition of one or both of the deponents, the procedure for seeking subpoenas should be followed. The motion was adopted. The vote was 4 in favor and 0 against.

That concluded the contested portion of the Agenda for the hearings before the Board on this date and Board Chairman Macias called Item 4, Administrative meeting, to be convened.

4. Administrative Meeting:

- a. Approval of previous Review Board meeting minutes for August 14, 2024.

It was moved by Scott Fullerton, seconded by Tyson Hollis to approve as read the minutes for the meeting of August 14, 2024. The Board members voting on the motion were Chairman Macias, Scott Fullerton, Tyson Hollis and Gled Bautista. Motion adopted. Vote: 4-0.

Chairman Macias then called Item 4.b.i. for consideration.

- b. Review contested case settlements, withdrawals of citations, motions, draft decisions, or pending issues for approval, rejection or amendment and possible issuance of final orders.
 - i. LV 22-2146, Specialty Contractors Northwest, LLC.

The Sole question before the Board was whether the draft decision prepared by Board Counsel was consistent with the action the Board took when deciding the case. It was moved by Scott Fullerton, seconded by Tyson Hollis to approve the decision as drafted by Board Counsel, to authorize the Board Chairman to execute the decision and to allow Board Counsel to make any corrections in spelling other administrative revisions of the decision without further review by the Board. The motion was adopted.

Vote: 3-0-1 (Bautista abstaining as he was not part of the disposition of this matter).

- ii. LV 23-2216, Complete Demo Services

The Chairman then called this matter for hearing. The matter was before the Board also, for the Board to determine whether the draft decision and the disposition of this matter was consistent with what the Board felt was their disposition of the case. As one of the three Board members eligible to vote on the disposition of Complete Demo Services was absent, thereby, causing the Board to lose a quorum to consider the disposition of this decision, Board Counsel advised that this matter would have to be continued. Mr. Paripovich then intervened and again wanted to know when the 30 day timeframe would commence to run because he did not want to miss his 30 day time limit for filing an appeal. Ms. Ortiz informed him that his time would not begin to run until the final decision is placed in the mail. Mr. Paripovich thanked the Board. This matter was then concluded and will be placed on the Agenda for the meeting of October for the Board.

- iii. RNO 22-2141, Sierra Construction Concepts, Inc.

This matter was continued to the October meeting of the Board.

- iv. LV 23-2187, Ross Co. Construction, Inc.

This matter was continued to the October meeting of the Board.

Chairman Macias then called 4.b.v and continuing through 4.b.xix including xii and xvi for consideration. These are matters that were settled and the Board is obliged to consider the proposed settlement in order to determine whether the settlement is consistent with the purpose of State OSHA, namely safe employment and a safe environment where the employment is performed.

v. LV 23-2205, ANA, Inc. dba Ana

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

vi. LV 23-2217, Unforgettable Coatings, Inc.

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

vii. RNO 24-2238, VIP Rubber Company, Inc.

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

viii. LV 24-2256, Las Vegas Peach, LLC dba Goettl Air Conditioning & Plumbing

It was accordingly moved by Tyson Hollis, seconded by Scott Fullerton, to approve the settlement. Motion adopted. Vote: 4-0.

ix. RNO 24-2290, Wabtec US Rail, Inc.

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

x. RNO 24-2296, Bently Nevada, LLC

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

xi. LV 23-2182, Sephora USA, Inc.

It was accordingly moved by Scott Fullerton, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

xii. LV 23-2190, KBL Reinforcing, Inc.

This matter was continued to the October meeting of the Board.

xiii. RNO 20-2008, Aqua Metals Reno, Inc.

It was accordingly moved by Tyson Hollis, seconded by Scott Fullerton, to approve the settlement. Motion adopted. Vote: 4-0.

xiv. RNO 20-2009, Aqua Metals Reno, Inc.

It was accordingly moved by Scott Fullerton, seconded by Gled Bautista, to approve the settlement. Motion adopted. Vote: 4-0.

xv. RNO 24-2260, Diamond Concrete Cutting, LLC

It was accordingly moved by Tyson Hollis, seconded by Gled Bautista, to approve the settlement. Motion adopted. Vote: 4-0.

xvi. LV 23-2218, James F. Thomson Jr. dba American Southwest Electric

This matter was continued to the October meeting of the Board.

xvii. LV 23-2207, Silver State Bell dba Taco Bell Cantina

It was accordingly moved by Gled Bautista, seconded by Scott Fullerton, to approve the settlement. Motion adopted. Vote: 4-0.

xviii. LV 24-2233, Republic Silver State Disposal, Inc. dba Republic Services of South Nevada

It was accordingly moved by Scott Fullerton, seconded by Gled Bautista, to approve the settlement. Motion adopted. Vote: 4-0.

xix. RNO 23-2209, Johnston Moyer, Inc.

It was accordingly moved by Gled Bautista, seconded by Tyson Hollis, to approve the settlement. Motion adopted. Vote: 4-0.

Chairman Macias then called Item 4.c., to be heard.

c. General Administration and/or procedural issues.

i. General matters of import to Board members.

Frank Milligan's term on the Board came up for discussion. The Board was informed that Member Milligan's term as a member of the Board expired on September 30, 2024. His years of experience and fine service to the Board will conclude, therefore, on that date.

ii. Old and New Business.

Chairman then called this item to be heard, old and new business. There was no old or new business discussed.

iii. Discussion of pending cases.

Member Hollis asked about receiving correspondence of an "alternate plan." He wondered what that was all about. That question commenced a discussion about the Board case load. Board Counsel advised that after the October meeting of the Board, there will be no settlement agreements for review and approval as the Board will have handled all of those that had been presented to the Board for review. The Board's pantry will become bare after October, unless and until the State settles more cases and submits them to the Board for review. Board Counsel also pointed out that his office is current in all matters before it. Board Chairman advised the Board that in response to a request from Kristopher Sanchez, Phd, a proposed schedule of cases had been prepared. It was rejected by Dr. Sanchez who asked for a revised plan which was to be submitted to him by this Friday, September 13, 2024. Board Counsel advised that the plan is nearing completion. The deadline will be met. It will include 10 cases on the contested docket, each month. Cases have been set up to May 2025. There was then a discussion about there being a pinch point causing delays in the disposition of cases. Board Counsel advised that the Board was actually current in all matters before it but that there was still a number of cases yet to be heard by the Board. The alternate plan includes a proposal to submit 10 cases to the Board or at least schedule 10 cases for hearing before the Board for each month the Board meets. He pointed out, however, that generally speaking, it takes the Board at least one day to complete a hearing on a contested case. The Board only meets twice a month, therefore, as far as contested cases are concerned, unless the Board meets more than twice a month or the Board artificially shortens the amount of time a party would have to present its case, the most the Board could complete each month and dispose of contested cases would be two, one the first day and one the second day that the Board meets.

Salli Ortiz, counsel for the State, advised that her office could not handle 10 cases a month and it was unlikely that her office could handle 8 cases per month. To dispose of this number of cases per month, Ms. Ortiz would need additional personnel. And, to decide more than two cases a month, the Board would need to meet more than twice a month. On that note, the Board continued this discussion to the next meeting of the Board, in October, hoping that further dialog with Administration could be undertaken to see what can be done to solve these issues for the Board and parties.

Scott Fullerton said that Ms. Ortiz and Board Legal Counsel are doing all they can and that the Board's Legal Counsel has been doing an excellent job for the Board and the State. This ended the discussion for this item.

- d. Schedule of hearings on pending cases, calendar and status report. The Board has scheduled the following meetings:
- * November 13 and 14, 2024 – Las Vegas
 - * December 11 and 12, 2024 – Las Vegas
 - * January 8 and 9, 2025 – Reno
 - * February 12 and 13, 2025 – Las Vegas
 - * March 12 and 13, 2025 – Las Vegas
 - * April 9 and 10, 2025 – Las Vegas

* May 14 and 15, 2025 – Reno

5. Public Comment.

Chairman Macias then called this item to be heard. He advised that there was no public comment received by the Board at the hearing and Board counsel advised that his office had received no request for public comment during the course of the meeting.

6. Adjournment.

Chairman Macias then called for the Board to take up adjournment. It was moved by Gled Bautista, seconded by Tyson Hollis, to conclude the meeting of the Board. Motion adopted. Vote: 4-0.

Dated this 11th day of September, 2024.

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

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