

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

April 9, 2025

Jorge Macias (Management)
William Spielberg (Labor)
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 April 9, 2025, at 9:00 a.m.

The meeting was duly noticed in compliance with the Nevada Open Meeting Law to take place at the Division of Industrial Relations, 2300 West Sahara Avenue, Suite 750, 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.

The Chairman called the roll of the Board after convening the Board to commence the conduct of its business on this date. The members present for the meeting were Chairman Jorge Macias, Secretary William Spielberg, and Board members Scott Fullerton, Tyson Hollis and Gled Bautista. As all five members of the Board were in attendance, a quorum of the Board was present enabling the Board to conduct its business.

Also present for the meeting were Salli Ortiz, Esq., Legal 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 Charles R. Zeh, Esq., Legal Counsel to the Board of Review.

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.
6900 South McCarran Blvd., Suite 2040
Reno, Nevada 89509

Division of Industrial Relations
2300 West Sahara Street, Suite 300
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.

The Chairman then called this item, public comment, to be heard. He advised that there was no public comment being sought from the persons attending the meeting and Board Counsel advised that his office had received no public comment.

3. Contested Case Hearings.

The Board Chairman then called this Item to be heard. The Board's disposition of the remaining three contested matters on the Agenda under this heading.

- a. The first Item to be heard was LV 24-2281, Western States Contracting, Inc. (Fatality).

This matter came before the Board on Western States' Motion for Summary Judgment. Western States was represented by Dawn Davis, Esq., of the lawfirm of Snell & Wilmer L.L.P. The State, the complainant was represented by Salli Ortiz, Esq. Each party was given 30 minutes a side to argue their position concerning the Motion for Summary Judgment. The respondent, as the movant was also given 15 minutes to rebut the State's reply to the Motion for Summary Judgment. Both parties fully utilized the time allotted to argue their position concerning the Motion. The Motion was brought pursuant to Rule 56, NRCP. Motions for summary judgment may be granted where there is no genuine dispute over any of the material facts of the case and the moving party is entitled to relief as a matter of law.

At the conclusion of Oral Argument, the Board deliberated in public to dispose of the motion. The Board members were unanimous in their view that they required more information before it could dismiss the case at this stage of these proceedings. The Board members were unanimous in their view that there was still a lot of uncertainty as to the facts and grounds for the motion. The Board members were unwilling to dismiss a case as prayed for by Western States in

its Motion for Summary Judgment. The Board members did not believe the motion was ripe for disposition at this stage in the proceedings.

Accordingly, it was moved by Tyson Hollis, seconded by William Spielberg, to deny the Motion for Summary Judgment. The Motion was granted on a vote of 5 in favor 0 against. The Motion for Summary Judgment was directed towards the dismissal of Item 3 a. The remaining first and second claims asserted in this case were not the subject of the Motion for Summary Judgment. With denial of the Motion for Summary Judgment, however, all three claims remain viable and this matter will be set over for a trial on the merits of all three claims brought by the State against the responding party in this matter.

3. i. LV 25-2315, Staffmark Investments, LLC dba Staffmark

The Chairman then called Staffmark Investments, LLC dba Staffmark, to be heard. The State as Complainant was represented by Salli Ortiz, Esq., in this matter. The respondent appeared in *pro per*, through Jesus Arredondo a non-lawyer. Also appearing on behalf of the respondent was Sonia Ontiveros.

The State offered for admission into evidence Exhibits 1 and 2, consisting of pages C1-C209. The State's evidence packet was admitted into evidence without objection. The respondent brought no exhibits and offered no exhibits for admission into evidence. The State called to testify the CSHO on this matter, Clementine Cholke. She said at the outset of the meeting that she was known as "Clem."

For this matter, there were two citations, in the complaint. The first alleged a violation of Nevada Revised Statute 618.376(1). The statute requires that: "Every employer shall, upon hiring an employee, provide the employee with a document or videotape setting forth the rights and responsibilities of employers and employees to promote safety in the workplace." It was alleged that the employer, Staffmark, failed to ensure that employees were provided with a document or videotape setting forth the rights and responsibilities of employers and employees to promote safety in the workplace. The State called Ms. Cholke to testify. At the conclusion of her testimony, the employer, respondent, through Mr. Arredondo, did not question her testimony. It remained in the record without or challenge.

The second citation, Citation 1, Item 2, involved NRS 618.383(1), which provides that: "... as otherwise provided in subsections 8 and 9 [of NRS 618.383(1)], an employer shall establish a written safety program and carry out the requirements of the program within 90 days after it is established." Here, there are two elements to the citation. One is to establish a written safety program. The second is to carry out the requirements of the program within 90 day after it is established. It was alleged that the employer established a written safety program but did not carry out the requirements within 90 days after it was established.

After offering the testimony of Ms. Cholke, the State then called Sonia Ontiveros, from the respondent, to testify. Her testimony was brief. At the conclusion of her testimony, there was no cross-examination on behalf of the respondent. Ms. Ortiz then rested her case.

The Chairman then called Mr. Arredondo to present a case in defense. He advised that he had nothing further to add, that he was not challenging claim. Mr. Arredondo was advised that if he was going to argue the points that he was commencing to discuss with the Board, he would have to be sworn in to testify. Otherwise, the presentation by the State would be in the record completely unchallenged. Mr. Arrendondo, therefore, changed his mind and offered to testify. He was sworn in and did testify briefly. His presentation was quite short. He called no further witnesses. He rested as well.

The Board, however, questioned both parties and deliberated extensively, reviewing the contents of the State's evidence packet, in particular, and especially with reference to Citation 1, Item 2, and the issue of whether or not the respondent brought to the attention training for his employees in furtherance of the written safety program.

After considerable debate and discussion amongst the Board members, it was explained to the Board members that each Citation could be considered separately and approved or dismissed independent of the other. It was moved by Scott Fullerton, seconded by William Spielberg to affirm Citation 1, Item 1, in its entirety, including the fine levied of \$440. The motion was adopted. The vote was 5-0, unanimously approving the motion.

Next it was moved by Jorge Macias, to dismiss Citation 1, Item 2, on the grounds that it was clear that the employer did have a written safety plan but that it was unclear whether the State met its burden of proof regarding the second portion of NRS 618.383(1) concerning training made available to employees about the written safety plan. The motion died for the want of a seconded. It was then moved by William Spielberg, seconded by Scott Fullerton, to approve Citation 1, Item 2, in its entirety. Two persons voted in favor of the motion. Therefore, it died for the want of a quorum. A majority of a quorum is required to approve the motion.

It was then moved by Gled Bautista that Citation 1, Item 2, be approved but discounted by ten percent. This motion was denied as there was no second to this motion. The motion died for the want of a second. Tyson Hollis then moved to dismiss Citation 1, Item 2. The motion was seconded by Jorge Macias. The vote on this motion was 3 to 2 in favor of the motion with Macias, Hollis and Bautista voting in favor of the motion. The motion, therefore, carried disposing of Citation 1, Item 2, and with this vote, the case was disposed of in its entirety. A written decision will follow.

The Chairman then called to be heard on the contested docket, Unique Upholstery.

3. 2. LV 21-2107, Unique Upholstery.

Unique Upholstery was duly notice for the hearing by a formal written notice and a courtesy follow up letter advising of the time, date and place, that this matter will be heard on this date. No one appeared on behalf of Unique Upholstery. Ms. Ortiz appeared on behalf of the State. Mr. Ortiz told the Board, however, that the State was withdrawing it complaint in this matter, offering it to be dismissed with prejudice because the State was not going to proceed any further with this matter and was withdrawing its complaint. The offer to dismiss the matter with prejudice was accepted by the Board. It was moved by William Spielberg, seconded by Gled Bautista, to accept the offer of dismissal with prejudice, thereby dismissing the case with

prejudice. The motion was granted on a vote of 5 in favor and none against.

This concluded the contested docket for the hearing of the Board on this date. Board Chairman then convened the administrative meeting portion of the Board, Item 4 on the Agenda.

4. Administrative Meeting.

- a. Approval of previous Review Board meeting minutes for March 12, 2025.

It was moved by William Spielberg, seconded by Scott Fullerton, to approve the minutes of March 12, 2025 as read. Motion adopted. Vote: 5-0.

The Chairman then called Item 4.b. to be heard.

- b. Review status conferences, contested case settlement, motions, draft decision for approval, rejection or amendment and possible issuance of final orders.
 - i. RNO 19-1960, B&C Cabinet and Millwork, Inc. dba B&C Cabinets and Millwork.

The Chairman called to be heard, the approval of the Findings of Fact, Conclusion of Law and final order. This matter dates back to the time when the Board drafted the decisions and the prevailing party was responsible for providing the Findings of Fact, Conclusion of Law and Final Order consistent with the Decision of the Board. That was the question before the Board on this matter. It was moved by Glen Bautista, seconded by Scott Fullerton, to approve the Findings of Fact, Conclusion of Law and Final Order as consistent with the Board's decision in this matter. The motion was adopted on a vote of 5-0.

The Chairman then called for consideration the Status Conference items on the Agenda beginning with Item 4.b.1.

- i. LV 23-2199, Gaughan South LLC dba South Point Hotel and Casino

The Complaint in this matter was filed on January 4, 2023. The Answer was filed on January 19, 2023. The Board was notified that this matter settled on August 13, 2024. Since then, there has been no further action and the settlement document had not been sent to the Board for deliberation. Ms. Ortiz advised that they had finally secured a signed stipulation settling this matter. The stipulation and settlement are to be filed with the Board no later than April 30, 2025. If that deadline is not met, the matter will be set for hearing on the contested docket or dismissed as the case may be.

The Board next considered Clauss Construction, Item 4, b.ii on the Agenda.

ii. LV 23-2211, Clauss Construction

The complaint in this case was filed on March 6, 2023. The Answer was filed on March 16, 2023. The Board was notified that this matter had settled on December 5, 2023. No action had been taken since that date and the Board was without information as to the status of the matter. Ms. Ortiz advised that, in fact, it has settled and the agreement is being finalized/signed. It will be presented to the Board shortly. This matter shall be settled with proof to the Board by April 30, 2025 or it will be set on the contested docket or dismissed as the case may be.

The Board then took up Item 4.b.iii.

iii. RNO 23-2226, UHS of No. Nevada, LLC; Willow Springs LLC dba Willow Springs Center

The Complaint in this matter was filed June 15, 2023. The Answer was filed June 30, 2023. The matter was settled during the contested hearing on July 15, 2024. Once again, where are the settlement documents? They have not been provided to the Board, even though the matter was purportedly settled on July 15, 2024. If the settlement documents are not provided to the Board by April 30, 2025, it will be set on the contested docket or dismissed as the case may be.

The Board next considered Item 4.b.iv.

iv. LV 23-2197, Paradise Valley Assisted Living before known as Bridge Assisted Living at Life Care

This matter is being continued. The settlement documents have been prepared, finalizing and concluding the matter. The matter is continued to be set on the next administrative docket for consideration of the settlement/withdrawals of the Complaint if properly memorialized in the Order.

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

i. General administration and/or procedural issues.

The Board was reminded that Scott Fullerton's last meeting will be June 20, 2025, whereupon his term will expire as he has chosen not to renew his position on the Board. Tyson Hollis then brought up the status of the alternate position. The Board has not been informed that it has been filled. If the alternate position is not filled, and then Scott Fullerton's position remains unfilled, the Board's quorum requirements may be challenged. If there are two more absentees, the Board will be without a quorum.

ii. Discussion regarding Senate Bill 78.

The Chairman advised that he has been informed that the Board will not be subject to SB 78 and will not, therefore, be terminated or replaced. However, the matter needs to be monitored as when the Legislature is in session, it is not over until it is over.

iii. Old and New Business.

There was no old or new business discussed other than as above.

iv. Discussion of Pending Cases.

No discussion took place.

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

With the exception of Scott Fullerton's term expiring and the alternate position not being appointed, no Board members expressed any conflict with the hearing dates as listed on the Agenda.

5. Public Comment.

The Chairman then called this item to be heard. No public comment was elicited from the hearing before the Board and Board Counsel advised that his office received no public comment during the course of the meeting.

6. Adjournment.

It was moved by William Spielberg, seconded by Gled Bautista, to adjourn the meeting. The motion was adopted by a Vote of 5-0, meeting adjourned.

Dated this 14th day of May, 2025

/s/ Charles R. Zeh, Esq.

Charles R. Zeh, Esq., Board Legal Counsel

S:\Clients\OSHA\Minutes\2025\April 9, 2025.R3.wpd