

MINUTES OF THE MEETING OF  
THE NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

Held at Enterprise Library  
25 East Shelbourne Avenue  
Las Vegas, Nevada  
Commencing at 10:00 o'clock a.m.

February 10, 2016

PRESENT

Joe Adams (management)  
Nicole Baker (labor)  
James Barnes (public)  
Sandra Olson (management)  
Frank Milligan (public alternate)  
Fred Scarpello, Esq., Legal Counsel

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., February 10, 2016. 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.

The Chairman noted settlement of the cases previously noticed and set for hearing as follows, docket no. LV 16-1806, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. United Parcel Service, Inc. and docket no. LV 16-1824, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Western States Contracting.

The Chairman referenced the published agenda and announced all the contested cases set for hearing were settled. He called for conduct of the administrative meeting. The Board approved the minutes of the previous December 9, 2015 as distributed without change.

The Board members reviewed the previous decisions approved in draft and final, noting no further action required based upon completions effectuated since the last meeting.

The Board reviewed various pending case resolution/settlement documentation. Counsel advised follow on responses are expected from division counsel regarding support for only two remaining settlements. The Board directed counsel to report back after

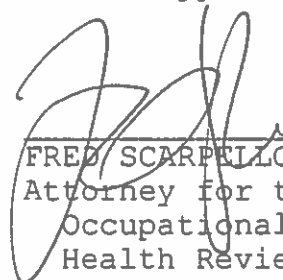
receipt of information to support resolution of those cases in furtherance of the rules and protocols confirmed by the Board and Chief Administrative Officer at the December Board meeting. Counsel was instructed to re-notice the next meeting agenda for review of dockets no. 15-1802, and 15-1803. Counsel reported that upon receipt of the foregoing, case resolutions held in pending status will be completed. The members acknowledged they will continue the recognized procedure for review of case settlements/resolutions and issuance of final orders.

Board members discussed legislative subcommittee information for periodic review, procedure and administration. Counsel noted additional comments from Board members and was instructed to provide the subcommittee with any relevant information requested.

Board members reviewed the pending hearing schedule of contested cases noting a reduction in the number of complaints being filed monthly by OSHES compared to previous years. The Board discussed time expectations for the substantial March contested hearing calendar. Counsel was instructed to continue stacking any additional cases for hearing noting matters now being set into May 2016.

Board members discussed the recent Nevada Supreme Court decision of the Terra Contracting case appealed from the district court, distinguishing the review commission and federal circuit court decisions under the burden of proof, defense of supervisory self-misconduct, and imputation of knowledge to an employer. Board members reviewed the legal distinctions as to violation foreseeability and knowledge imputation to an employer. Extended discussion occurred. Counsel was instructed to provide Board members with the background case law to assist the Board on futures cases noting the differences between the federal circuit court case law and interpretation and distinctions now drawn by the Nevada Supreme Court.

There being no further business, on motion, second and unanimous vote, the meeting of the Nevada Occupational Safety and Health Review Board was adjourned at approximately 12:15 p.m.



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FRED SCARFELLO, ESQ.  
Attorney for the Nevada  
Occupational Safety and  
Health Review Board