

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

Held at DEPARTMENT OF OCCUPATIONAL
SAFETY & HEALTH
4600 Kietzke Lane, Building B, Suite 111
Reno Nevada on
Wednesday, April 13, 2016
Commencing at 9:00 o'clock a.m.

PRESENT

Joe Adams (management)
James Barnes (public)
Steve Ingersoll (labor)
Sandra Olson (management)
Fred Scarpello, Esq., Legal Counsel

ABSENT

Nicole Baker (labor)
Frank Milligan (alternate)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 9:00 a.m., April 13, 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 announced settlement of the cases previously noticed and set for hearings as follows, docket no. **RNO 16-1831**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. R&B Roofing, LLC, **RNO 16-1829**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Quad/Graphics Printing Corp., and **RNO 16-1816**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. PRS of Nevada Ltd.

The Chairman noted particularly that docket no. **RNO 16-1829**, was reported as settled by OSHES counsel to Board counsel just prior to the hearing, and for purposes of public announcement as referenced above, concluded all cases to be heard on the contested hearing calendar.

The Chairman called for commencement of the Board administrative meeting and referenced the posted agenda made a part of these minutes and incorporated as attached.

The minutes of the previous board meeting were approved as distributed based upon motion by Ms. Olson, second by Mr. Barnes and unanimous vote of all Board members present.

The Board referenced the second agenda matter on schedule of hearings, pending matters, contested hearing docket calendar, and status report.

The Board discussed general availabilities for attendance and satisfaction of the quorum at forthcoming contested hearings and meetings. Labor representative Board member Ingersoll indicated he might not be available in May and June. Counsel was instructed to contact Board member Baker to confirm her attendance to satisfy the quorum.

Board counsel reported that enforcement counsel advised, as previously distributed through memorandum to members, that three cases referenced on the status report requiring answers past due had been subject of settlements, namely: dockets **RNO 16-1834**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Ahren Rentals, Inc., **LV 16-1836**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Nevada Pipeline & Grading Corp., and **LV 16-1842**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Badger Construction.

The remaining cases for potential settings, namely dockets **RNO 16-1837**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Silverwing Development and **RNO 16-1840**, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Silverwing Development, were reported as likely to settle, but subject of continuing investigation by OSHES. Based upon the indications of settlement of all current pending action cases, public and/or the required advance party notice and timing for posting and publication for May hearing settings of contested cases awaiting answers would be difficult or impossible.

Given the recent confirmed settlements and likelihood the three remaining will be resolved for pending Northern Nevada cases, the Board members agreed to conduct the May administrative meeting

in Las Vegas to address matters requiring attention particularly those that must be held in a duly noticed "open meeting."

Board member Ingersoll noted his potential unavailability on the designated May meeting date due to business travel requirements - he raised the issue of whether telephonic participation **limited to only the administrative meeting** portion could satisfy legal requirements under the Nevada Open Meeting Law. The Board reviewed and discussed the issue and instructed counsel to study Chapter 241 to determine applicability and guidance. Counsel advised he would review the issue and include same on the next board open meeting agenda for discussion and "possible action."

The members discussed the differences of allowing telephone attendance at occasional administrative meetings as opposed to contested hearings. Issues compelling personal attendance at contested hearings included the need for review of exhibits as presented, discussions, debate, and an interchange, particularly requiring Board members to view witnesses testifying under oath to determine findings of credibility and preponderant weight of evidence. The focus of consideration for telephonic participation was agreed to be strictly limited to attendance under the potential for use in only administrative meetings involving Board business for discussion, such as approval of draft decisions previously decided upon in the open meeting format and matters other than the actual contested hearings. Board counsel commented that a general reference to Chapter 241 indicates telephonic appearance is generally permitted, therefore as limited by the Board in the admin setting it could be implemented if confirmed as lawful under Chapter 241. The Board agreed and instructed counsel to set the administrative meeting in May, note that Mr. Ingersoll would appear telephonically and participate, subject to Board counsel review of Chapter 241 to confirm as found during the meeting, i.e. that telephonic appearance would be permitted under the Nevada Open Meeting law. Counsel commented that labor representative Baker is now scheduled to attend such that if for any reason Mr. Ingersoll could not attend telephonically, a lawful quorum would exist.

Board members discussed the June contested hearing calendar. Mr. Ingersoll noted he may not be available at that time, and questioned whether it is possible for the Board members to reschedule the June meeting. Board members indicated they would review their schedules. Counsel advised he would check with enforcement and respondent counsel to determine if all had availabilities to move their calendars for the two contested cases currently set. Board counsel noted it is often difficult for attorneys to move their calendars around freely due to previous commitments with courts or other administrative proceeding advance

settings. Counsel also advised he would have to confirm the availability of the hearing room. The two subject cases set on the June calendar were previously moved from the May calendar due to unavailability of the CSHO. This would be the second change and likely even more difficult for the various attending counsel, but the questions will be pursued and reported back to the Board.

The chairman noted that both May and June meetings would be subject of Las Vegas venue. The June calendar is reserved primarily to hear the contested cases as set (or moved to another June date); and the May calendar relegated to the administrative agenda for matters discussed today for inclusion, or other matters that may require or be subject of public notice, or Board request.

The chairman referenced item 4(c) on the public agenda as review of the draft decisions previously circulated after amendment, edit and board input re dockets no. 16-1825 and 16-1830. Board members generally discussed the draft decisions and particularly LV 16-1830, which decision included reference to the recent Nevada Supreme Court decision on "**employer foreseeability**" and the substantial limitations imposed for a finding of violation utilizing constructive notice and "**employer knowledge**" in the instance of violative action on the part of the **supervising employee** himself. After discussion by all Board members present, it was moved by Board member Barnes, and seconded by Board member Olson that the decisions be approved as previously decided and drafted in final with no changes in substance. The Board members present voted unanimously to approve the final decisions in dockets 1830 and 1825. Counsel was instructed to issue the decisions in final, effectuate service on all parties and enter same on the status report accordingly.

The Board discussed general administration and procedural matters. The Board reviewed the provisions of the Nevada Open Meeting Law and discussed compliance requirements, transcription, and alternatives for use of audio voice recordings to be operated throughout the entire meeting. Chairman Adams noted that during a recent meeting with the Sunset Subcommittee, the Subsequent Injury Board testimony indicated their meetings were apparently subject of audio recordings. Counsel discussed the matter and advised of previous discussion with DIR legal counsel as to compliance and various options. Mr. Ingersoll again noted issues on attendance telephonically by Board members, to confirm his proposal and Board consideration would apply only to administrative meetings rather than the contested hearings. Counsel confirmed that NRS 618 requires the contested hearings be transcribed by a certified court reporter to preserve the Record on Appeal for any appeals to District Court and other appellate review. All contested hearings

are and must continue to be transcribed by a certified court reporter from commencement of the Board meeting. The Board discussed the minutes that are regularly kept. Counsel confirmed all written meeting minutes are furnished to three sections of the DIR, and of course distributed to all Board members. The same procedure would continue. Discussion was focused on review of open meeting law compliance, options, alternatives, and voice recordings. The latter would require technical recording equipment. The facilities utilized by the Board were not equipped with any audio or teleconferencing capabilities. Board counsel advised any changes for compliance, corrections or resolution of any issues noted must be included as a specific subject on the next published Board agenda and identified as a "for possible action" item for any resolutions, compliance, changes, corrections, or alternatives discussed at the open meeting and formally implemented at that time.

Board chairman Adams and chairman elect Barnes reported on the meeting of the Sunset Subcommittee. Presentation to the committees was made by Chairman Adams with attendance by Mr. Barnes and Board counsel Scarpello. The chairman reported that all materials as prepared, circulated and approved by the Board were submitted. There were no questions raised by any of the subcommittee as to the Board information presented. The meeting was very brief.

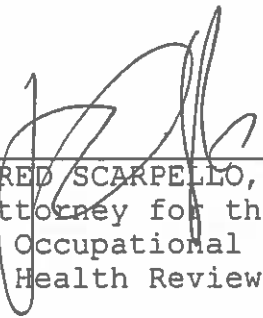
Both Messrs. Adams and Barnes commented that the subsequent injury counsel and board also under DIR jurisdiction testified by simulcast were subject to extensive questions with regard to a variety of matters, including makeup of Board members from North and South and the required balance for participation.

There were no added questions from Board members. Counsel advised that should anything further be received on Sunset it would be promptly transmitted to the Board. Chairman Adams concluded noting that the chairman of the committee, Senator Settlemeyer, thanked the board for its previous work and noting no suggested changes from the board nor any received from any legislative representatives at that time, that the matter would be reported to the full committee. It was the conclusion of all present at the meeting that, as expected, the Sunset Subcommittee was focused on boards and commissions that no longer have sufficient business to remain viable therefore subject to being phased out. The OSHA Board, given its operation and the demands in the past and the current activity did not appear subject of any redirection, change or elimination.

Board members summarized the issues for the next administrative meeting reflecting items discussed. Counsel advised

a proposed draft of the agenda would be circulated promptly to all board members and urged any additional input be provided due to the time constraints on physical posting and electronic publishing of the agenda.

There being no further business before the Board the meeting was adjourned on motion by Board member Olson, seconded by Board member, Ingersoll and on unanimous vote adjourned at approximately at approximately 10:40 a.m.



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