

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.

September 15, 2016

PRESENT

James Barnes (public)  
Nicole Baker (labor)  
Steve Ingersoll (labor)  
Rodd Weber (management)  
Fred Scarpello, Esq., Legal Counsel

ABSENT

Sandra Roche (management)  
Frank Milligan (alternate)

The Nevada Occupational Safety and Health Review Board convened the scheduled meeting of the board at approximately 10:00 a.m., September 15, 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 called the Board to order for hearing of the first case on the contested calendar, namely docket no. LV 16-1853, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. EFI Global, Inc. The Chairman noted the appearance of division counsel, Ms. Salli Ortiz, Esq. on behalf of complainant, Chief Administrative Officer of the Occupational Safety and Administration, Division of Industrial Relations of the Department of Business and Industry and Mr. D. Jason Ferris, Esq. on behalf of respondent, EFI Global, Inc.

Documentary evidence and witness testimony were presented in the course of the hearing. The matter was concluded and the case submitted at approximately 12:45 p.m. The Board adjourned for a luncheon recess at 12:45.

The chairman reconvened the Board at approximately 1:30 p.m. and commenced deliberation of the case submitted on the contested hearing calendar, namely docket LV 16-1853, Occupational Safety and

Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. EFI Global, LLC. After study of the hearing notes, pleadings, exhibits, deliberation, and review of the applicable Nevada Administrative Code provisions and proof elements required under Nevada occupational safety and health law, a question for the vote was called. The Board reached a decision subject to drafting, edits and final review for approval as follows:

On motion, second and unanimous vote, the Board found a violation at Citation 1, Item 1, NAC 618.927(1), confirmed the classification as Regulatory and approved the proposed penalty in the sum of \$300.00.

The Board directed counsel to prepare, draft and circulate the proposed decision for review, comment and edit prior to final issuance.

The Board discussed of matters subject of the published administrative agenda. The previous meeting minutes were approved as distributed on unanimous vote of members present.

The Board reviewed the hearing schedule, setting calendar, status report, and exchanged information on availability, time expectations for the hearings, administrative meeting and assurance of the special legal quorum. The Board noted the October reserved hearing dates had not yet been completed with formal setting notices. Counsel advised two cases subject of answers to be filed would be set on that calendar if agreeable to all members. Docket LV 17-1862, Gilmore Construction and LV 17-1863, O'Hagin, LLC were designated to be set and heard provided the answers are timely filed permitting sufficient time for public notice under the Nevada Open Meeting law and service of notice on the litigating parties. Members and counsel discussed the remaining matters shown on the hearing schedule for cases awaiting receipt of answers. Counsel advised that the contested matter previously continued, based upon counsel scheduling, docket RNO 16-1851, Reno Forklift, Inc. is currently set to be heard in Reno on the November docket. The other Reno matters pending settings in November included three cases: RNO 17-1858, RNO 17-1859 and RNO 17-1861. The December hearing and/or administrative days are reserved for December 14<sup>th</sup> and 15<sup>th</sup>. Counsel noted the limited number of cases currently being filed as well as the substantial number of cases being settled. Counsel reported that any new matters filed would likely be designated for the December Las Vegas hearing calendar. Similarly any new Reno matters filed could be included on the November Reno calendar.

The Board reviewed the contested case settlements pending formal review and published "for possible action" as LV 16-1852, Desert Plastering, RNO 16-1845, Cooper Roofing, LV 16-1848, XL Landscape, and RNO 16-1829, Quad/Graphics. The memoranda accompanying each of the settlement document packages were reviewed by Board members and discussed with counsel. The Board again noted that many of the resolutions provided only minimal supporting rationale despite the agreement OSHES comply with not only the disclosure of settlement terms but meaningful references to warrant Board approval after review. Counsel advised that some of the matters as noted in the memoranda contained sufficient, albeit minimal, supporting rationale, but might be acceptable for consideration of approval. Board members commented that they would approve based upon the advisory, but instructed counsel to again review these matters with OSHES counsel and request meaningful evidentiary bases be provided rather than merely the "possibility or potential" of defenses.

The Board noted particularly the resolution in Cooper Roofing, docket RNO 16-1845. The resolution of the case on the morning of the hearing remains of concern to Board members present given the lack of any ability to understand why the case was actually settled without disclosure of settlement terms. Counsel advised that it was unusual and would be discussed with OSHES counsel as previously instructed; but on its face in the present revised order format noting lack of evidentiary disclosure is recommended for approval, unless there was a specific objection and vote by Board members. The order was approved and counsel instructed to issue and serve same on all parties.

A similar discussion occurred with regard to docket LV 16-1848, XL Landscape Development, where again the terms and rationale for settlement were not meaningfully disclosed for the Board to understand why the case remained on the contested calendar for an extended period of time, yet resolved only shortly before the scheduled hearing date. Board counsel advised of the difficulties often encountered in the litigation process; the members reluctantly agreed on unanimous vote to issue the order drafted by Board counsel.

The Board reviewed the remaining case subject of settlement, docket RNO 16-1829, Quad/Graphics. Based upon the memoranda advisory of counsel the final order was approved for issuance.

Board members discussed the draft and edits to the decision in docket 16-1852, Desert Plastering. Members reviewed the proof elements, supporting case law, and edits/revisions. No changes were made to the final decision. Counsel noted the formal transcript had not yet been received for final edit review, but expected same to be delivered shortly. Counsel advised that

witness testimony referenced in the decision would be double checked in the final transcript and revised to any extent required, but not expected to change any of the substantiative aspects of the decision. Board members instructed that unless anything substantiative was found that would change the final decision as edited, it should be approved for issuance. On motion, second and unanimous vote, counsel was instructed to revise areas as appropriate, prepare the decision in final form, and effectuate service on all parties.

Members reviewed the agenda item regarding the status of the Board counsel legal contract. Counsel advised the contract had been approved and signed off by the Board of Examiners for the one-year extension, but not yet received in an original/hard copy.


The Board reviewed the recent publication in the UNLV Boyd Law School Journal and overview of DIR, OSHES and Review Board operations. The Board members discussed the points raised in the article, noting it was informative, seemed "reasonably balanced," and pointed out areas of concern for future study and/or correction relating to decision publication, settlement disclosure documentation and related aspects for Review Board operations but which require action through DIR.

The Board reviewed general administration procedural issues. Members noted the counsel memorandum for review, study and discussion of issues relating to potential member conflicts, the Nevada recusal statute, and Attorney General's Opinion guidance on disclosure of potential conflicts of interest and the appropriate process and procedure to be followed. Members discussed the overall aspects, duties and obligations under the opinion. Board counsel noted concerns had been raised for a potential conflict in a recent matter heard and subject of review. Board Counsel reported the facts confirmed no direct conflict existed but rather only an appearance for a remote potential conflict. He advised that even remote instances should be subject of discussion and review with Board counsel any time a Board member perceives any potential for same. The administrative meeting was attended by the Board members present, but also telephonically by Board member Roche. The parties discussed the recent facts/issues and agreed that any future matters of this nature or that relate to conflicts will follow the AGO and statutory guidance. Counsel noted that normal interactions will inevitably occur from time to time among employers, representatives, and Board members who operate in the common safety field for their own companies or personal employers, but should always raise concerns for the perception of potential conflicts. Counsel particularly noted in the recent instance there was no issue of any direct conflict with the litigant party respondent or complainant, and related only to personal acquaintances with party representatives. Counsel again noted that

often lawyers or safety professionals appearing before the Board may have some personal or business contacts with Board members. While even if remote, secondary in nature and/or without actual conflict, still best subject of a general review with counsel to determine if public disclosure is appropriate to assure compliance with the advisories and AGO guidance subject of the memoranda and documentation review.

Board members discussed availabilities for the next scheduled meeting in October. Board member Weber noted that he may be out of the area and have to travel back to Nevada to attend the meeting but would keep counsel apprised accordingly. Counsel noted he would confirm the availability of management member Roche in the event of the unavailability of member Weber to attend. Board member Ingersoll noted that he has some travel issues, but will keep counsel apprised as he may be able to adjust his schedule accordingly. Counsel confirmed assured attendance from labor representative member Baker.

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 3:00 p.m.



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