

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.

October 12, 2016

PRESENT

James Barnes (public)
Nicole Baker (labor)
Sandra Roche (management)
Fred Scarpello, Esq., Legal Counsel

ABSENT

Steve Ingersoll (labor)
Rodd Weber (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., October 12, 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 17-1862 Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Gilmore Construction. The Chairman noted advisories by Board counsel that the case had been continued and reset on the December hearing docket based upon a Motion for Continuance due to medical reasons and confirmed by counsel. The Chairman announced no further matters on the contested hearing docket. After setting the record for full advisories to any members of the public, the Chairman concluded the contested hearing portion of the meeting.

The Chairman reconvened the Board at approximately 10:15 a.m. and commenced the administrative meeting, referencing 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, and status report. A discussion was conducted with regard to the

continued decrease in contested case complaint filings, and extraordinary reduction in the number of matters for hearing adjudication or review of settlement documentation. Board members reviewed the cases on appeal from the status report. Counsel provided updates as to any matters subject of monitoring until completion of all pleadings and then distribution of the files to each Board member for study and review.

The chairman noted Item 4(c) on the published agenda regarding review of contested case settlements for approval and issuance of decisions and/or Final Orders as required by the Nevada Open Meeting law "for possible action." Review of the final draft decisions from the contested hearing conducted on August 10, 2016, docket no. LV 16-1852, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Desert Plastering, and LV 16-1853, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. EFI Global, heard on September 15, 2016, were considered for approval "for possible action" as well as dockets RNO 17-1856 and RNO 17-1857, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. RMC Hotel Manager, and LV 15-1782, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Never Late Printing.

Board members again discussed the draft decision previously approved in docket LV 16-1852, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Desert Plastering, after study of the transcript, which was delivered later than usual, to compare witness testimony to that reflected in the decision. No changes of substance in the ultimate decision were required but only minor edits after verification of the testimony from the transcript. The chairman noted that at the previous Board meeting, Board members voted to approve issuance of the decision and final service unless the transcript demonstrated anything sufficiently material to warrant a review of the ultimate decision. There having been none, the Chairman confirmed the signed decision issued based upon the previous vote.

The Board reviewed the draft decision in docket LV 16-1853, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. EFI Global as previously circulated amongst Board members. Counsel reported that some revisions would likely be required upon receipt of the transcript to verify the testimonial references in the decision as taken from the notes during the hearing. Board

members discussed and agreed the decision should be issued in final subject to verification of any transcript testimony and edits effectuated by Board members and/or counsel. The decision will be issued without further reconsideration unless Board counsel advises the matter should be brought back before the Board due to any substantiative matters found in the transcript that would affect the ultimate decision. On Motion, second, and unanimous vote, Board members effectuated final action authorizing counsel to issue the decision after final editing so long as no evidence found to change the ultimate decision.

Board members discussed the matters "for possible action" on settlement documentation in the three matters listed on the agenda. The Chairman referenced the explanatory correspondence received from division counsel after inquiry by Board counsel due to the return of the proposed settlements based upon the lack of sufficient information and clarity to determine exactly what the settlement effectuated was and the rationale to support same. Board members again expressed concern that rationale and sufficient clarity for understanding and transparency of these settlements should be included in the formal settlement documentation as the "rule rather than exception." However based upon the explanatory correspondence and considering that the settlement occurred at the informal conference, despite the requirement that all settlements must be in accordance with all NAC rules and the Board directives "once Board jurisdiction is effectuated to the filing of a complaint," the settlement will be accepted for approval with the supporting information provided by division counsel. Board members noted and agreed this type settlement process outside the plain meaning interpretation of the NAC is not to be considered a precedent in these matters for the future. Board counsel was again instructed to review settlement documentation rules and policy with division counsel to assure return to the long-standing settlement rules and practice, despite what they may be called, i.e. withdrawals, resolution, etc. to comply with the rules. The Chairman noted that fairness, clarity and transparency for the entire OSHA program under NRS/NAC Chapters 618 the Board and public must assure that the review process designated by NRS and NAC 618 is meaningfully compliant.

Board members reviewed the final settlement in docket LV 15-1782, Never Late Printing. The Board members noted, based upon counsel memorandum outlining the resolution, the settlement documentation, rationale and format were appropriate for approval by Final Order. On motion, second and unanimous vote, all foregoing were approved by the Board members present.


The Board discussed general administrative matters and noted the extraordinary reduction in OSHES complaint filings and limited cases pending. Cases set on the agenda for forthcoming hearings

were discussed. Limited time will be required for the November meeting due to continuance of docket RNO 17-1861, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. New Millennium Building, based upon timely motion of counsel and a first instance leaving only docket RNO 16-1851, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Reno Forklift, Inc. Counsel and Board members discussed assurance of a quorum, time estimates for the contested hearing and related matters. Counsel noted the now later arrival of the Las Vegas airplane, due to Southwest schedule changes, may cause a slight delay in the designated 9:00 commencement time for Las Vegas members attending. Mr. Weber confirmed he would arrive on the evening flight the prior day to assure timely appearance and an existent quorum at 9:00, the designated commencement time on the Northern Nevada calendar.

Discussion was held with regard to the December docket, LV 17-1862, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Gilmore Construction, previously set for hearing today, was rescheduled and would be heard on December 14th. The Chairman noted that the case was classified 1/Repeat and 1/Other, with a substantial penalty. Board counsel advised he expected this case would likely go forward as a contested matter, given the classification and penalty, and the fact it had been continued from the docket today, so perhaps an indication that settlement was not likely.

Board members reviewed other cases on the hearing schedule and status report awaiting settlement documentation, pending review action, and related matters. Counsel was instructed to adjust the report list after this meeting to reflect matters subject to final action and approvals for issuance of orders today; any matters not addressed are to be subject of written request of division and/or respondent counsel as appropriate.

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 10:55 a.m.



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Occupational Safety and
Health Review Board