

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.

December 14, 2016

PRESENT

James Barnes (public)
Steve Ingersoll (labor)
Sandra Roche (management)
Rodd Weber (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 10:00 a.m., December 14, 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 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 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. Christopher McCullough, Esq. on behalf of respondent, Gilmore Construction.

Documentary evidence and testimony were presented in the course of the hearing. The case was adjourned for a luncheon break at 12:45 p.m. The Board reconvened the hearing approximately 1:45 p.m. Witness testimony continued and, after closing arguments of counsel, the matter was concluded and submitted at approximately 4:15 p.m. The Board adjourned for a brief recess.

The Chairman reconvened the Board at approximately 4:20 p.m. and commenced deliberation of the case submitted from the contested hearing calendar, namely docket LV 17-1862, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Gilmore Construction.

After study of the hearing notes, pleadings and exhibits, deliberation and review of the applicable case law, a question for the vote was called. On Motion, second and vote, of 3-1, Board members Barnes, Roche and Weber for the motion, and Mr. Ingersoll opposed, a determination of no violation by a preponderance of evidence as to Citation 1, Item 1, was found. Board member Ingersoll objected noting Exhibit 1, page 30, paragraphs 20(e) and 21, to reflect the reported findings of the inspector referencing statements and positions of respondent witnesses which appear to undercut the premises and evidentiary considerations made by the Board majority in reaching the preliminary decision. After continued review and discussion, and motion, second and unanimous vote, the Board recalled the preliminary decision vote and entered an order instructing counsel to prepare a notice for a continued hearing of the matter for consideration of the evidence and testimony and to allow additional evidence and testimony on the limited purposes of ascertaining the satisfaction of the burden of proof given the evidentiary references. Board counsel advised that in fairness to all parties the continued hearing can be limited, but sufficiently flexible to allow the parties to address the concerns noted by the Board members during the course of the deliberations debate. Counsel was instructed to draft an order broad enough to permit the parties to reargue the submitted evidence and present any additional legally competent evidence to corroborate the references in the investigative report.

The Board commenced review of the remaining matters subject of the published administrative agenda. The previous Board meeting minutes were approved as distributed on unanimous vote.

The Board reviewed the current setting calendar of contested cases, and projected the forthcoming hearings for the months of January, February and March.

The Board considered final action on the contested case settlements pending on the status report for approval and issuance of final orders. Counsel referenced prior distribution of all information and materials relating to the settlements as presented by the parties and inquired whether there were any objections to the settlements since the time of distribution. There being no objections, on motion, second and unanimous vote of all members present, the Board approved the issuance of Final Orders as to the following: LV 16-1847, Whole Lotta Loaf, RNO 17-1864, Mars Petcare, RNO 17-1858, C Punch Ranch, and RNO 17-1859, C Punch Ranch.

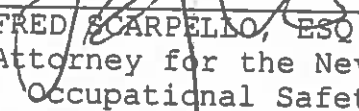
Counsel was instructed to draft the Final Orders, obtain the chairman's signature and formally serve the parties to effect conclusion of the identified cases. Counsel advised the matters would be so referenced on the forthcoming status report.

The Board members discussed exchange of correspondence and general procedural matters that occurred the previous month. It was noted the issue as to premature notice of appeal in the EFI Global case, docket LV 16-1853, was subject of correspondence exchanges amongst complainant, respondent and Board legal counsel. Board counsel reported that complainant also filed a motion to dismiss the appeal on the jurisdictional basis of premature appeal prior to issuance of a Final Order. Opposing counsel recognized the error and advised it would be corrected by a withdrawal or dismissal of the appeal. Once the Final Order is issued and served on the parties, it is expected the appeal of the subject matter by the respondent would then proceed. Counsel was instructed to monitor the matter and maintain advisories to the Board.

General discussion was had with regard to any potential major issues for the next published agenda. None were presented. Members were advised to promptly inform counsel in advance of the next agenda posting requirements for any matters that may require final or formal notice of action in the public meeting forum.

Counsel noted that January and February are reserved for pending Northern Nevada cases sett for hearings. The Las Vegas venue will be held open for any additional matters filed for hearing in southern Nevada and the continued hearing in docket LV 17-1862, Occupational Safety and Health Administration, Division of Industrial Relations of the Department of Business and Industry, vs. Gilmore Construction.

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 5:30 p.m.



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