

STATE OF NEVADA

**Minutes for the
Nevada Occupational Safety and Health Review Board
Reno, Nevada**

February 13, 2019

Present

**James Halsey (labor)
Sandra Roche (management)
Frank Milligan (public at large)**

Due to travel problems, the Board meeting was delayed until it was called to order by Acting Chairman James Halsey, who chaired the meeting by acclimation of the Board in the absence of Board Chairman Steve Ingersoll and Board Secretary, Rodd Weber. The meeting was called to order at approximately 11:23 a.m. The Board meeting was scheduled to commence at 9:00 a.m., on this date, February 13, 2019. By text message, Board counsel was apprised of Board travel issues around 7:00 a.m., on February 13, 2019. As a result, the commencement of the Board meeting would have to be delayed. Board counsel contacted by e-mail the Board, Salli Ortiz, Esq., Michael D. Hoy, Esq., Jess Langford, and all of the other interested parties that the Board meeting would not convene at 9:00 a.m., as scheduled because of travel issues but instead would convene at 11:30 a.m., this date. This e-mail blast went out at 8:03 a.m., as soon as Board counsel's assistant arrived early at the office, and sent the e-mail blast. She also contacted others pertinent to these proceedings by e-mail, phone or both, to advise of the delay.

Then, at approximately 11:23 a.m., on Wednesday, February 13, 2019, Acting Chairman Halsey called the meeting to order as stated.

1. Roll Call.

Present in Reno for the Board meeting were James Halsey, Acting Chairman, members Sandra Roche and Frank Mulligan. Absent from the meeting were Chairman Steve Ingersoll and Secretary Rodd Weber. 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.

Also in attendance at the meeting in person was Board Legal Counsel, Charles R. Zeh, Esq., The Law Offices of Charles R. Zeh, Esq., and Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations (DIR). Michael D. Hoy, Esq., Hoy Chrissinger Kimmel Vallas, PC., was also personally present as were various witnesses, OSHA staff and observers.

As three Board members were present to participate on the meeting, one on behalf of labor and one on behalf of management, a quorum was present.

Notice of the meeting was posted or published, electronically or otherwise, consistent with the requirements of the Nevada Open Meeting Law.

2. Public Comment.

There was no public comment.

3. Contested Cases Hearings.

a. RNO 19-1960, B&C Cabinet and Millwork, Inc.

Acting Chairman Halsey called item 3 to be heard and asked Board Counsel to advise the Board. Board counsel stated that the hearings for items 3.b., Caliber Holding Corp., RNO 19-1963 and 3.c., Pacific West Contractors of Nevada, LLC, RNO 18-1953, were vacated and continued to new dates for hearing by order of the Board Chairman, Steve Ingersoll. That left RNO 19-1960, B & C Cabinet and Millwork, Inc., as the only case to be heard.

Acting Chairman called RNO 19-1960, B & C Cabinet and Millwork, Inc., for hearing. The complainant, the Chief Administrative Officer of the Occupational Safety and Health Administration of the Division of Industrial Relations Department of Business and Industry, State of Nevada, appeared and was represented by Salli Ortiz, Esq., Division Counsel, Division of Industrial Relations. The Respondent, B & C Cabinet and Millwork, Inc., dba B & C Cabinets and Millwork, Inc., appeared and was represented by Michael D. Hoy, Esq., Hoy Chrissinger Kimmel Vallas, PC.

The parties presented witnesses and offered documents and records into evidence. The Board heard the testimony and admitted documents and records into evidence. After the parties rested, the Board informed the parties that it would take the matter under submission, and after deliberations, render its decision. The hearing was thereupon concluded. Mr. Hoy and his client and client witnesses then departed the hearing room. Ms. Ortiz and other State staff remained.

4. Administrative Meeting:

c. Review Pursuant to NAC 618.773, Withdrawal of Notice of Contest which is subject to Board Approval.

i. RNO 19-1968, Lakeside Specialized Transportation.

As the hour was growing late, the Board took next for consideration item 4.c.i., RNO 19-1968, respondent, Lakeside Specialized Transportation, LLC, in order to accommodate Lakeside's legal counsel, Anthony L. Hall, Esq., of Simons Hall Johnston PC. Salli Ortiz, Esq., was also present for this matter, representing the complainant, the Chief Administrative Officer of the

Occupational Safety and Health Administration of the Division of Industrial Relations Department of Business and Industry, State of Nevada. This matter was before the Board because the respondent had unilaterally withdrawn its contest of the complaint lodged against it and filed the withdrawal with the Board. NAC 618.773 allows a party to withdraw its notice of contest of the State's complaint, at any time, but only with Board approval. The withdrawal is not automatic according to NAC 618.773. Accordingly, Mr. Hall stated that his client had determined that the cost of defending against the claim, even though a frivolous claim in respondent's eyes, outweighed fighting the claim and as a result, paid all the fines totaling \$8,000 and agreed to remediate the issues that caused the complaint in the first place. Salli Ortiz advised the Board that the respondent had, indeed, paid the fines and agreed to remediate and as a result, with the payment of the fine, there was nothing left for the State to pursue. Accordingly, it was moved by Frank Milligan, seconded by Sandra Roche, to allow the withdrawal and to direct an order be entered dismissing the case with prejudice. **Motion adopted.**

Vote: 3-0.

The Board then returned to the regular order and took up Item 4.a.

4. Administrative Meeting.

a. Approval of the previous Review Board minutes of January 24, 2019.

Acting Chairman Halsey next called this matter to be heard, consideration of the minutes for the Review Board meeting of January 24, 2019. It was moved by Frank Milligan, seconded by Sandra Roche, to approve the minutes as written. **Motion adopted.**

Vote: 3-0.

b. Review contested case settlement, motions, draft decision, or procedural issues pending on status report, for approval and issuance of final order:

i. LV 18-1949, Titan Roofing, LLC.

Acting Chairman Halsey called this item to be heard. The Board then considered the settlement and disposition of this matter. Accordingly, after discussion and the record before the Board, it was moved by Frank Milligan, seconded by Sandra Roche, to approve the settlement and disposition of LV 18-1949, Titan Roofing, LLC. **Motion adopted.**

Vote: 3-0.

ii. LV 18-1916, Prestige Dental, LLC.

Acting Chairman Halsey called this item next to be heard. The Board then considered the settlement and disposition of this matter. Accordingly, after discussion and the record before the Board, it was moved by Frank Milligan, seconded by Sandra Roche, to approve the settlement and disposition of LV 18-1949, Titan Roofing, LLC. **Motion adopted.**

Vote: 3-0.

iii. RNO 18-1944, Briggs Electric.

Acting Chairman Halsey then called this matter next to be heard. RNO 18-1944, Briggs Electric. This matter was before the Board upon the State's motion to dismiss the case. The State informed the Board that it was making this motion to dismiss the case because the State determined that upon the facts before it, it could not make out a *prima facie* case and, therefore, the case should be dismissed with prejudice. It was accordingly moved by Frank Milligan, seconded by Sandra Roche, to accept the recommendation of the State for dismissal of this case with prejudice and to have Board counsel prepare an order dismissing the case with prejudice for the reasons stated. **Motion adopted.**

Vote: 3-0.

iv. LV 18-1948, Pier Construction & Development, LLC.

Acting Chairman Halsey next called this item to be heard, LV-18-1948, Pier Construction & Development, LLC. This case is before the Board to decide whether the draft decision was consistent with the decision actually reached by the Board when disposing of the matter. Upon further review, the Board concluded that the decision was consistent with the disposition of the matter. It was accordingly moved by Sandra Roche, seconded by Frank Milligan, to approve the decision as written and to direct Board counsel to secure the signature of the Board Chairman. Any typographical errors may be corrected without Board approval, upon filing. **Motion adopted.**

Vote: 3-0.

d. General Administration and/or Procedural Issues:

i. General Matters of Import to Board Members:

There were no matters discussed.

ii. Old and New Business.

Board counsel explained that the State in the Savage case had filed a motion to reconsider. It was preliminarily believed that this kind of motion does not toll the time to file a petition for

judicial review and, therefore, the Board must act with dispatch after the State files its pleading in reply in order for the motion to be heard in time.

e. Schedule of Hearings and Pending Cases, Calendar and Status Report.

The next scheduled meeting is set for March 13 and 14, 2019, at 3360 West Sahara Avenue, Suite 175, Las Vegas, NV 89102.

f. Consider Rescheduling July 10 and 11, 2019 Board Meeting.

Acting Chairman Halsey called this matter next, consideration of rescheduling the July 10 and 11, 2019 meetings of the Board. The State has requested that the Board reschedule this meeting date for all matters as the State OSHA office will be undergoing training for all its personnel or a significant part of its personnel and, thus, State OSHA would be unable to attend. This matter will be agendized for further discussion next month when the full Board should be available.

The Board then returned to deliberate on RNO 19-1960, B & C Cabinet and Millwork, Inc. Board members reviewed the facts as presented, considered each of the items in the citations, and reviewed with particularity the specific language of each of the pertinent regulations, 29 CFR §§ 1910.134(e)(1), 1910.134(k)(1) and 1910.1200(h)(1). The Board also took special note of the fact that in assessing the severity of the charges, for Citation 1, Item 1, "Serious," the complainant gave no credit to the respondent for the fact that the respondent immediately abated the complaint. When asked why no credit was given for the immediate abatement, the respondent could not give a reason. When asked what the credit would have been, had a credit been given, the respondent stated a 15% reduction would have been given. Having exhausted the deliberations, Acting Chairman Halsey called for a motion. Board counsel advised that there should be a separate motion for each charge. Thus, for Citation 1, Item 1, 29 CFR §§ 1910.134(e)(1), it was moved by Sandra Roche, seconded by Frank Milligan, to affirm Citation 1, Item 1, save and accept to give the respondent a 15% credit for abatement that had arbitrarily and capriciously been withheld, thereby reducing the fine by 15% to the sum of \$1820.70.

Motion adopted.

Vote: 3-0.

Next, it was moved by Frank Milligan, seconded by James Halsey, to affirm Citation 1, Item 2, 29 CFR § 1910.134(k)(1) including the fine of \$2,142.00. **Motion adopted.**

Vote: 2-1 (Roche dissenting).

Then, it was moved by Frank Milligan, seconded by James Halsey to affirm Citation 1, Item 3, 29 CFR § 1910.1200(h)(1), including the fine of \$2,678.00. **Motion adopted.**

Vote: 3-0.

This concluded the Board's disposition of this matter. Board counsel is to prepare a Decision for Board review, and if the Decision is approved, the parties are to prepare Findings of Fact, Conclusions of Law and a Final Order for the Board's review and approval, within 25 days of the Board's issuance of its decision.

5. Public Comment.

There was no public comment.

6. Adjournment.

Acting Chairman Halsey called this matter next. It was moved by Sandra Roche, seconded by Frank Milligan, to adjourn the meeting. **Motion adopted.**

Vote: 3-0.



/s/Charles R. Zeh, Esq.
Charles R. Zeh, Esq., Board Legal Counsel

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